

Hanutaram Vs. Kumbharam and ors.

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Court : Rajasthan

Decided On : Feb-03-1971

Reported in : AIR1971Raj283; 1971(4)WLN70

Judge : C.M. Lodha, J.

Acts : Limitation Act, 1908 - Sections 3 - Schedule - Article 62; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 1

Appeal No. : Second Appeal No. 64 of 1965

Appellant : Hanutaram

Respondent : Kumbharam and ors.

Advocate for Def. : P.N. Datta, Adv.

Advocate for Pet/Ap. : S.G. Bhandari, Adv.

Disposition : Appeal dismissed

Judgement :

C.M. Lodha, J.

1. This is an appeal by an unsuccessful plaintiff Hanutaram whose suit for recovery of Rs. 3615/- was decreed by the trial court to the extent of Rs. 3000/- only but was dismissed by the District Judge, Bikaner on appeal by the

defendants.

2. The plaintiff Hanutaram's case is that the defendants Nos. 2 and 3 Kanaram and Baksharam respectively took him to village Bansasar with a view to bring about the engagement of his daughter Imali with Taruram brother of defendant No. 1 Kumbharam, but since he did not like the boy on account of the disparity of age between him and his daughter he refused to betroth his daughter with Taruram. It is alleged by the plaintiff that in spite of his refusal the defendants Nos. 2 and 3 gave out that Imali had been betrothed to Taruram and ultimately all the three defendants accompanied by some more persons came to his village and forced him to pay Rs. 3000/- to the defendants Nos. 1 and 2 Kumbharam and Hanutaram on the pain of taking away his daughter Imali and forcibly marrying her to Taruram if he did not comply with their demand. The plaintiff goes on to state that due to the fear of his daughter being forcibly taken away for marriage with Taruram he paid Rs. 3000/- to the defendants Nos. 1 and 2. It appears there was also some criminal litigation between the parties but since Hanutaram was not successful in getting back Rs. 3000/- alleged to have been paid by him to the defendants Nos. 1 and 2 under coercion, he filed the present suit on 27-9-61 in the Court of Civil Judge, Ratangarh for recovery of Rs. 3000/-, along with interest Rs. 615/-. total Rs. 3615/-. The suit was resisted by the defendants who put up a counter version and pleaded that no money was paid by the plaintiff, but as a matter of fact the plaintiff had betrothed his daughter Imali with Taruram on the condition that Rs. 2500/- would be paid to him by Taruram's elder brother Kumbharam defendant No. 1 and that Rs. 1500/- were actually paid by Kumbharam to the plaintiff at the time of engagement and Rs. 1000/- were promised to be paid later on. The defendants' case is that the plaintiff resiled from his promise to marry his daughter to Taruram and performed her marriage with the son of one Udaram and accepted Rs. 3000/- from Udaram in lieu of this marriage. It was pleaded that Hanuta Ram voluntarily returned Rs. 1500/- to the defendant No. 1 Kumbharam on account of having broken the engagement of his daughter, and that the plaintiff was not entitled to any relief. After recording the evidence produced by the parties the learned Civil Judge, Ratangarh by his judgment dated 28-2-1963 decreed the plaintiff's suit for Rs. 3000/- Aggrieved by the judgment and decree by the trial court the defendants filed appeal in the Court of District Judge, Bikaner who. as already stated above,

reversed the judgment and decree by the trial court and dismissed the plaintiff's suit. Consequently the plaintiff has come in second appeal to this Court.

3. At this stage It may be necessary to point out that the plaintiff's suit was resisted by the defendants on the ground of limitation as well and issue No. 3 was struck on the Question of limitation, which runs as follows:

'3. Whether the suit is within limitation?'

The trial court decided this issue against the defendants by simply observing that the issue had not been pressed by the parties during the course of arguments. In appeal before the learned District Judge the defendants agitated the Question of limitation and the learned District Judge held that the suit was governed by Article 62 of the Indian Limitation Act, 1908 which was in force at the time of the institution of the suit, and that it was barred by time. However the learned District Judge dealt with the case on merits also and found, that the plaintiff's version was incorrect and that he had not Paid Rs. 3000/- or any amount as alleged by him to the defendants.

4. While hearing this appeal. I called upon the learned counsel for the appellant first to deal with the question of limitation which goes to the root of the case. On hearing the learned counsel for the parties. I have come to the conclusion that the plaintiff's appeal must fail on the ground that the suit was barred by limitation, and therefore I have not heard the learned counsel for the parties on other points.

5. I shall now proceed to give reasons in support of my finding that the suit is barred by limitation. Learned counsel for the appellant argued in the first instance that it was not open to the learned District Judge to non suit the plaintiff on the question of limitation because the defendants had given up the plea of limitation before the trial court. In support of his contention he relied upon: Sukhlal v. Deepchand, ILR (1954) 4 Raj 17 = (AIR 1954 Raj 58) and Anant Mal v. Lala, ILR (1963) 13 Raj 1137 = (AIR 1964 Raj 88). It was held in these cases that an appellant cannot be permitted to raise a plea In second appeal which was abandoned by him in the court below and that Issues abandoned by a party during the trial of the suit cannot be revived. It may be pointed that none of these two

cases deals with an issue of limitation as a pure question of law. In my opinion, where issues regarding jurisdiction and limitation as questions of pure law are involved, and they go to the root of the matter the right to raise an Issue cannot be treated as having been waived.

6. In *Kundo Mal v. Daulat Ram*, AIR 1940 Lah 75 it was observed that there is abundant authority in support of the proposition that objections regarding limitation cannot be waived and even if they are waived they can be taken up again by the parties waiving them or by the Courts themselves. In support of the aforesaid observation the learned Judges relied on *Des Raj v. Lachhi Ram*, AIR 1933 Lah 404; *Hukam Singh v. Shahar Din*, 44 Ind Cas 890 = (AIR 1918 Lah 374); *Radha Mohan v. Ami Chand*, AIR 1934 All 386; *Ram Charitter v. Suraj Teli*, AIR 1932 All 108 and *Surayya v. Venkataramanamma*, AIR 1940 Mad 701.

7. Again in *Pallakdhari v. Bankey*, AIR 1925 Pat 549 it was argued that the question of limitation having not been pressed in the trial court, the first appellate court ought not to have allowed the defendants to raise the question in appeal. It was pointed out that the question was raised in the written statement and an issue was also framed and that even if it was not pressed in the trial court, it was open to the defendants to press the point of limitation on appeal. In this connection reliance was placed on Section 3 of the Limitation Act. The same view was taken in *Sheikh Makbul v. Union of India*, AIR 1960 Orissa 146. I may here point out that distinction must be made between cases where the question of limitation raised is a pure question of law and where it is a mixed question of fact and law and the parties had no opportunity to meet it on evidence. In case it is a question of pure law the right to raise an issue of limitation cannot be waived. In this connection reference may be made to section 3 of the Limitation Act which runs as under:--

'3. Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred and application made after the period of limitation prescribed therefor by the first Schedule shall be dismissed, although limitation has not been set up as a defence'.

A plain reading of this section shows that the court is bound to dismiss a suit or other proceeding which has been instituted after the period of limitation although

limitation may not have been set up as defence.

8. In the present case the issue of limitation has been raised as a pure question of law. According to the plaintiff Rs. 1000/- were paid on 5-4-1958 and Rs. 2000/- were paid on 16-4-1958. The suit has been filed on 27-9-1961 that is after more than three years of the alleged payments. The only question for decision is whether the suit would be governed by Article 62 or by Article 120 of the Limitation Act, 1908? No question of fact is involved for decision of this point and therefore the issue of limitation raised in this case must be treated as one of pure law. Consequently, the defendants cannot be debarred from agitating the question of limitation in appeal even though the issue regarding limitation was not pressed by either party before the trial Court.

9. This brings me to the question whether the suit has been rightly held to be barred by limitation under Article 62 which prescribes period of three years from the date when the money is received. The learned District Judge has relied on T. S. N. T. Co-operative Society v. S. Sundaram. AIR 1957 Trav Co. 61 and Johari Lal v. B. S. Co-operative Bank Ltd. Panta. AIR 1959 Pat 477 in support of his conclusion that the suit would be governed by Article 62 of the Limitation Act and not by Article 120.

10. In AIR 1957 Trav Co 61 after an elaborate discussion of the case law bearing on the subject the learned Judge observed as follows;

'Of the two views that can be taken on the interpretation of the Article one is that the Article should be strictly construed or in other words that the expression 'money received by the defendant for the plaintiff's use' should be given its literal meaning, and the other is that the expression should be understood in the sense in which it is used in English Common Law as a count of action.

If the expression is strictly construed the Article can apply only to cases in which the defendant receives money for the use of the plaintiff and cannot apply to cases in which the defendant wrongfully exacts money from the plaintiff. But if the expression is understood in the sense in which it is used in English Common Law as a count of action the Article will apply to all cases in which 'the defendant has

received money which in justice and equity belongs to the plaintiff under circumstances which in law render the receipt of it a receipt by the defendant for the use of the plaintiff.

In that case it will apply to suits 'for money got through imposition (express or implied) or extortion or oppression or an undue advantage taken of the plaintiff's situation', and to cases in which 'money is paid by the plaintiff in discharge of a demand illegally made under colour of an office'.

On the strength of the rulings of the various High Courts in India referred to above we prefer to take the view that the expression has to be understood in the sense in which it is used in English Common Law as a count of action. The fact that Courts in India are Courts of law and equity cannot affect this question.'

10. Article 62 came up for Interpretation before this Court also in Jain Bros. and Co., Bundi v. State of Rajasthan, ILR (1963) 13 Raj 1063 = (AIR 1964 Raj 17). That case arose out of a suit for refund of a sum of money which was received by the defendant State from the plaintiff by way of Sales Tax. There being no sanction of law behind it, the money which was exacted by the defendant from the plaintiff was held to be immediately returnable to him that is at the very time of receipt and therefore the defendant was held to have received it in law for the plaintiff's use. In this view of the matter the suit, it was held, properly fell within the ambit of Article 62 and no other and it was further observed that the residuary Article 120 could not be applicable to it. The Travancore Cochin case, AIR 1957 Trav Co 61 referred to above was relied upon by the learned Judges and it was observed 'that the correct interpretation to be put on the key words in Article 62 is the one which should conform to the meaning of these words in the English cases, and that a simple or literal interpretation of these words, which appear to us to be clearly technical, as discussed above would not be correct.'

It was further held 'that Article 62 governs suits for money had and received not only where the defendant may have actually received money for the use of the plaintiff as his agent or in a like capacity, but it also governs suits for money whereof it can be rightly postulated that the defendant has received money which he had no right to receive and the receipt whereof by the defendant therefore

amounts in law or by a legal fiction to a receipt by him for the plaintiff's use.'

From the observations extracted above it would be clear that this Court has preferred to take the view that the expression 'money received by the defendant for the plaintiff's use' occurring in Article 62 has to be understood in the sense in which it is used in English Common Law as a count of action.

11. In the present case, it is crystal clear that the plaintiff's suit is for recovery of money alleged to have been paid by him to the defendant by extortion or coercion and consequently the case would be covered by the expression 'money received by the defendant for the plaintiff's use' occurring in Article 62. In this view of the matter since the suit has been admittedly filed after more than three years, of the alleged payment of Rs. 3000/- by the plaintiff to the defendants, it was rightly held to be barred by limitation by the learned District Judge.

The result of the foregoing discussion is that this appeal must fail, and it is hereby dismissed. In the circumstances of the case, I make no order as to costs.

Learned counsel for the appellant prays for leave to appeal to Division Bench. However, I do not consider it a fit case for grant of leave. Leave is refused.

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