

Gujarmal Vs. Sukhpal

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Court : Rajasthan

Decided On : Jan-09-1969

Reported in : 1969WLN37

Judge : D.M. Bhandari, C.J. and; V.P. Tyagi, J.

Appeal No. : Civil Revision No. 213 of 1966

Appellant : Gujarmal

Respondent : Sukhpal

Disposition : Application allowed

Judgement :

D.M. Bhandari, C.J.

1. This revision application arises under the following circumstances:

2. The plaintiff Gujarmal instituted the suit for the recovery of Rs. 217 on the basis of a Khata against the defendant opposite party Sukhpal before the Nyaya Panchayat Sakar on 11th November, 1962. Briefly the case of the plaintiff was that on 4th November, 1959 the defendant executed a Khata for Rs. 264/- and made payments of Rs. 50/- and Rs. 60/- on 27th April, 1960 and 26th August, 1960 respectively. It is not expressly stated that the defendant had signed the payment entries, but it appears from the Khata filed by the plaintiff before the said Nyaya

Panchayat that the payment of 26th August, 1960 was thumb marked by the defendant and in view of the fact that rules of pleadings are not strictly followed in the Nyaya Panchayat, it may be taken that the payments were signed by the defendant. The Panchayat considered it to be a fit case to be tried by the regular court under Section 55 of the Rajasthan Panchayat Act (Act No. XXI of 1953) hereinafter called the Act and therefore sent it to the court of Munsiff Rajasthan for trial. The Munsiff was of the view that the suit, when instituted before the Panchayat, was barred by time under the provisions of the Act and therefore, the said Panchayat was not competent of send the case to him under Section 55 of the Act and he, therefore, dismissed the suit.

3. On appeal by the plaintiff, the Senior Civil Judge endorsed the view of the learned Munsiff that the suit was barred by limitation under the provisions of the Act. He dismissed the appeal. The plaintiff has filed this revision application on the ground that the lower court had no jurisdiction to dismiss the suit of the plaintiff as it was within time. This revision application was heard by Jagat Narayan J. and in his view the question raised was of importance and therefore, he referred the cas2 to a Division Bench for decision.

4. To appreciate the contention raised by learned Counsel for the parties before us, it will be proper to refer to some of the relevant provisions of the Act Sections 38 to 62 deal with the civil jurisdiction of the Nyaya Panchayat constituted under the Act. Section 38 runs as follws:

Notwithstanding anything contained in the Code of Civil Procedure 1908 and subject to the provisions of this Act a Nyaya Panchayat shall have jurisdiction within the Nyaya circle for which it has been constituted for the trial of such suits as are described in Section 39

5. Section 39 enumerates the nature of the suits to be tried by a Panchayat and it includes a suit for ascertained sums not exceeding Rs. 250/- Section 44 provides that every suit instituted before Nyaya Panchayat after the period of limitation prescribed therefore in the Second Schedule shall be dismissed, even though a plea of limitation has not been set-up as a defence. The Second Schedule to the Act is as follows:

THE SECOND SCHEDULE

Description of Period of Time from which Suits	Limitation period begins to run
1. For money due on 3 years When the moneya contract became due to	plaintiff
2. For the recovery When the plaintiffof moveable became entitled to	property or the to the delivery ofvalue there of 3 years the property
3. For compensation When the moveablefor wrongly taking 3 years property wasor injuring wrongfully taken	moveable property or when injurywas done to it
4. For damages 6 months When the damageby cattle was caused by	trespass the cattle trespass

6. Section 49 of the Act runs as follows:

The provisions of the Code of Civil Procedure 1908, the Code of Criminal Procedure, 1898, the Court Fees Act, 1870, the Indian Evidence Act, 1872, and the Indian Limitation Act, 1908, shall not apply to any proceedings before a Nyaya Panchayat save to the extent provided in this Act or as may be prescribed but the Nyaya Panchayat shall ascertain the facts of every suit or case before it by every lawful means in its proper perspective and there after make such decree or order as it may deem just. Such decree or order shall contain a brief statement of the reasons thereof.

7. It may be mentioned that there is no provision either in the Act or in the Rules made there under which makes the provisions of the Indian Limitation Act, 1908 applicable to suit pending before a Nyaya Panchayat.

8. Section 55 runs as follows:

When any Nyaya Panchayat having jurisdiction is of the opinion that any suit or case before it is of such a nature or of such intricacy or importance that it ought to be tried by regular court the Nyaya Panchayat shall stay proceeding and send the suit or case to the nearest regular court of competent jurisdiction for trial.

9. The view taken by the Munsiff Rajgarh, to whom the suit had been sent for trial by the Panchayat, is that the suit filed by the plaintiff before the Nyaya Panchayat was barred under Section 44 of the Act and as such it had no jurisdiction to send the case to the regular court of competent jurisdiction only for the purpose that it

may come within limitation by application of the provisions of the Indian Limitation Act. In our opinion, this view is obviously wrong. The Nyaya Panchayat under Section 55 of the Act had the jurisdiction to send the case for trial to a court of competent jurisdiction if it is of the opinion that any suit before it is of such a nature or of such intricacy or importance that it ought to be tried by a regular court. In such cases it is the opinion of the Nyaya Panchayat that matters and the Court to which the suit has been sent for trial cannot question that opinion of the Panchayat and refuse to entertain the case. It appears that the Senior Civil and Additional Sessions Judge, Alwar, before whom the appeal was filed by the plaintiff, did not endorse this view. He dismissed the suit on the ground that as originally the suit was instituted in the Court of Nyaya Panchayat, the provisions of Section 44 of the Act were applicable to it and that even if the suit has been transferred to the court of Munsiff, the provisions of the Indian Limitation Act would not apply to it.

10. It is clear that if Section 19 of the Indian Limitation Act, 1964 is not applicable to the plaintiff's suit, it is barred by limitation, as there is no provision under the Act extending the period of limitation on account of the payment made by the defendant. Therefore, the true question which is material for the decision of this revision application is whether the suit even after it has been sent by the Nyaya Panchayat to the Munsiff after the period of limitation under Section 44 of the Act, would govern the proceedings so far as the period of limitation is concerned. On behalf of the plaintiff it is contended that the provisions of the Indian Limitation Act would apply while on behalf of the defendant it is contended that the provisions contained in Section 44 of the Act and the Second Schedule will apply.

11. In our opinion, as soon as the suit was registered in the court of Munsiff Rajgarh, the provisions of Section 3 of the Indian Limitation Act became applicable. For the purpose of Indian Limitation Act, a suit is instituted when the plaint is presented to a proper officer under Section 3(2) of that Act and it must, therefore, be held that the suit was instituted when the plaint was presented to the Nyaya Panchayat. It could be dismissed under Section 3(1) only when it is held that it was instituted after the prescribed period and the plaintiff was not entitled to the benefit of the provisions contained in Section 4 to 24 of the Indian Limitation Act. It is contended that even when the suit has been registered in the court of

Munsiff, Section 44 did not cease to be operative because originally the suit was instituted before the Nyaya Panchayat. It may, however, be urged that Nyaya Panchayat's power to dismiss a suit under Section 44 of the Act ceases as soon as the case is sent to the Munsiff's court. It may also be pointed out that Section 38 to 60 which define the civil jurisdiction of the Nyaya Panchayat and the mode in which the jurisdiction is to be exercised by it cannot be applied when the matter has gone out of the jurisdiction of a Nyaya Panchayat. If the contrary view is taken, it would mean that Section 49 of the Act continued to remain applicable even when the case has been sent for trial to the court of Munsiff, and the effect of such interpretation will naturally be that the provisions of the Indian Evidence Act and that of the Code of Civil Procedure will not apply and the civil court shall have to ascertain facts and decide the suit without applying the provisions of these two Acts. This appears to us to be absurd. The very wordings of Section 49 point out that it is only to the proceedings before a Nyaya Panchayat that the provisions of the Code of Civil Procedure, the Code of Criminal Procedure, the Indian Evidence Act and the Indian Limitation Act would not apply.

12. In this view of the matter, the Munsiff Rajgarh could not dismiss the suit of the plaintiff under Section 44 of the Act and he could have dismissed it only under Section 3 of the Indian Limitation Act, 1964. This is what we have to say with regard to the limited question about the applicability of Section 44 to a suit being tried by a regular court.

13. There is yet another important question in this case for our consideration. The jurisdiction of a Nyaya Panchayat to try a suit mentioned in Section 39 of the Act is very limited. There is no provision in the Act to show that the Nyaya Panchayat has the exclusive jurisdiction to take cognizance of the matters enumerated in Section 39 of the Act. Even in matters covered by the main part of Section 20, the jurisdiction of the Nyaya Panchayat is excluded by the proviso if the suit is instituted:

(a) by or against a minor or a person of unsound mind;

(b) by or against the Chairman or any member of the same Nyaya Panchayat or the Sarpanch or any member of the Panchayat or a Panchayat Circle lying within the

same Nyaya Circle.

14. It is thus clear that a regular court of law has a concurrent jurisdiction with the Nyaya Panchayat. Wherever a Nyaya Panchayat has not been constituted, it is only the regular court which will have jurisdiction to entertain and decide a suit.

15. Now, there are all sorts of provisions governing the period of limitation for the institution of a suit under the Indian Limitation Act, 1964 which is the general law of the land applicable to all citizens. Section 44 of the Act however makes special provision and prescribes a period of limitation which is not exactly on the lines of the provisions contained in the Indian Limitation Act. Section 49 of the Act makes the provisions of the Indian Limitation Act inapplicable to the proceedings before a Nyaya Panchayat. These provisions of the law, therefore, result in prescribing two periods of limitation for a suit depending upon the forum. A plaintiff who institutes a suit in a Nyaya Panchayat would not get the benefit of Sections 4 to 24 of the Indian Limitation Act, 1964, while the benefit of these provisions will be available to another plaintiff instituting the suit in a regular court. The question therefore that arises is whether the legislature of Rajasthan was competent to say down without offending Article 14 of the Constitution a special rule of limitation which has no reference to the nature of the suit instituted but has reference only to the forum in which it is instituted. No doubt, limitation is mentioned in the concurrent list under the Constitution and a special period of limitation maybe prescribed for a special matter by enacting a special law, but it is not permissible to apply different principles while prescribing periods of limitation for suits instituted in different forums. We are aware of the observations, in *Mr. Baldeo Singh and others-Appellants v. The State of Bihar and Ors. Respondents* : 1957 CriLJ998 in which it has been held that there is no discrimination in following the procedure by a Gram Cutcherry as laid down in Section 60 of the Bihar Panchayat Raj Act, (Act No. 7 of 1948). That provision runs as follows:

Subject to the provisions of this Act and to any rules or directions that may be made or issued by the Government in this behalf, the procedure to be followed by a bench of the Gram Cutcherry shall be such as it may consider just and convenient and the bench shall not be bound to follow any laws of evidence or

procedure other than the procedure prescribed by or under this Act.

16. The argument addressed before the Supreme Court was that Section 62 of the Bihar Panchayat Raj Act gave only concurrent jurisdiction to the Gram Cutcherry in the regular criminal court and it left it open to a party to go either to the ordinary courts or to a bench of the Gram Panchayat Cutcherry and that this opened the door for discrimination because the procedure followed in the ordinary Courts is substantially different from that followed by a Gram Cutcherry. This argument was rejected on the ground that Section 62 was subject to Section 68 which laid down that no court shall take cognizance of any case or suit which is cognizable under the Act by a bench of the Gram Cutcherry, unless an order to the contrary has been passed by the Sub-Divisional Magistrate or the Munsiff concerned under the provisions of the Act or any other law for the time being in force. It was pointed out that really there was no discrimination and a case cognizable by a bench of the Gram Cutcherry must be tried there. This case, however, is distinguishable on the ground that in the Act there is no provision giving exclusive jurisdiction to the Nyaya Panchayat.

17. Apart from that the provisions of Limitation Act have far reaching consequences with regard to the rights of the litigants, a mere change in the forum in which the suit is instituted is not a rational basis for laying down two different rules of limitation governing two claims of the same nature. The benefit which is given to a plaintiff under the provisions of Sections 4 to 24 when a suit is instituted in a regular civil court cannot be denied to another plaintiff who has the misfortune of instituting a suit in a Nyaya Panchayat under the provisions of the Act. No doubt, a distinction can be drawn between a claim of a Government and a claim of an individual as was done in *Navratanmal and Ors. v. State of Rajasthan* : [1962]2SCR324 while upholding the validity of Article 149, but it is very difficult to draw a distinction on any rational basis between the claims of two citizens simply on the ground of different forums in which suits are instituted. The special provisions contained in Article 149 providing longer period of limitation to the Government was upheld on two grounds (1) on the ground that if a claim of the Government becomes barred by law, the loss falls on the public and (2) on the ground that in the case of Government machinery, it was a known fact that it did

not move as quickly as an individual. In this background it was held that it was a rational basis for treating the Government differently as regards the period of limitation and, therefore, Article 149 did not offend Article 14 of the Constitution. But can it be said that those two considerations apply in the present case, We are of the view that there is hardly any good reason for placing two similar claims on different basis as regards the question of the applicability of the period of limitation simply because one claim has been filed before a Nyaya Panchayat and the other before a regular court. On no rational basis the benefit of Section 4 to 24 of the Indian Limitation Act can be denied to the plaintiff who instituted his suit in a Nyaya Panchayat and the nature of whose claim is similar to that of the other who institutes the suit in a regular civil court and to whom such benefit has been given. The provisions of the Limitation Act provides to grant certain reliefs to the plaintiff as pointed out by their Lordships of the Supreme Court in the following observations in *Navratanmal and Ors. v. State of Rajasthan* : [1962]2SCR324 *supra*.

First and foremost there is the feature that the Limitation Act, though a statute of repose and intended for quiting titles and in that sense looks at the problem from the point of view of defendant with a view to provide for him a security against stale claims, addresses itself at the same time also to the position of the plaintiff. Thus, for instance where the plaintiff is under a legal disability to institute a suit by reason of his being a minor or being insane or an idiot, it makes provisions for the extension of the period taking into account that disability Similarly public interest in a claim being protected is taken into account by Section 10 of the Act by providing that there shall be no period of limitation in the case of express trusts. It is not necessary to go into the details of the provisions but it is sufficient to state that the approach here is from the point of view of protecting the enforceability of claims which, if the ordinary rules applied would become barred by limitation.

18. These provisions are based on sound principles of common sense and it is very difficult for us to uphold a provision which lays down two different rules of limitation in claims of two individuals similarly situated simply because the claims are being tried in two different forums. In this view of the matter in our opinion Section 44 of the Act along with the Second Schedule to the Act and the provision

in Section 49 that Indian Limitation Act, 1908 shall not apply when the proceedings are instituted before a Nyaya Panchayat are ultra vires of the Constitution. The result is that the plaintiff's suit could not be dismissed under Section 44 of the Act.

19. We, therefore, allow the revision application and set-aside the orders of the courts below dismissing the suit of the plaintiff and remand the case back to the Munsif Rajgarh for deciding it in accordance with law. No order as to costs.

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