

Sumermal and ors. Vs. Birdhichand and ors.

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Court : Rajasthan

Decided On : Apr-29-1958

Reported in : AIR1958Raj318

Judge : K.N. Wanchoo, C.J. and; Jagat Narayan, J.

Acts : Limitation Act, 1908 - Sections 4 to 25 and 30; Rajasthan by Part B States Laws Act, 1951; Marwar Limitation Act, 1945 - Sections 4; Marwar Limitation (Amendment) Act, 1949 - Sections 4; Rajasthan Limitation Act (Adaptation) Ordinance, 1950 - Sections 9

Appeal No. : Second Appeal No. 313 of 1955 and Civil Revn. No. 40 of 1956

Appellant : Sumermal and ors.

Respondent : Birdhichand and ors.

Advocate for Def. : Hukumchand, Adv. in No. 313 and; Madhusudan Narain, Adv. for Non-Applicant No. 1 in No. 40

Advocate for Pet/Ap. : B.N. Chanda, Adv.

Judgement :

K.N. Wanchoo, C.J.

1. These two cases have been referred by a learned Single Judge to a Division Bench for decision as an important question of law which is common to both of

them arises therein. The learned Judge has formulated the question in these words:

'Whether an acknowledgment or part payment to be good and valid must have been made within the period prescribed by the law of limitation which was in force at the date the suit was brought, or it would also be good if it was made within the period of limitation which was in force at the time the acknowledgment or part payment was made or even if such acknowledgment or part payment was made during the special period of limitation permitted by subsequent Acts that is either under Section 4 of the Marwar Limitation Act of 1949 or under Section 9 of the Rajasthan Limitation Act, (Adaptation) Ordinance of 1950 or Section 30 of the Limitation Act as applied to the State by Part B States Laws Act 1951.'

2. Having formulated the question, the learned Judge has referred the entire case because there is no other point of dispute between the parties except the question of limitation.

3. We may briefly give the facts of the two cases to understand the implication of the question referred to us. In Civil Regular Second Appeal No. 313/1955, (hereinafter called the appeal), the facts are these. The Khata, out of which the suit has arisen, was executed on 9-10-1941.

At that time, the Marwar Limitation Act, 1945, (hereinafter called the 1945 Act) was in force, the period of limitation in that Act for such suits being six years. There was part payment on 9-4-1947. Then from 27-3-1949 came the Marwar Limitation Act, 1949 (hereinafter called the 1949 Act).

By this Act, the period of limitation in certain class of cases, including this, was shortened as compared to the 1945 Act and there was a saving clause in this Act, namely Section 4. Then on 25-1-1950 came the Rajasthan Limitation Act, (Adaptation) Ordinance of 1950 (hereinafter called the 1950 Act).

It provided a saving clause in Section 9 to cover cases where the period of limitation was shortened as compared to the earlier Acts of various Covenanted States repealed by it. Finally came the Indian Limitation Act which was applied by

the Part B States Laws Act of 1951 (hereinafter called the 1951 Act).

This Act came into force on 1-4-1951 and contained a saving clause in Section 30 of the Limitation Act as applied by it. A second part payment was made on 28-11-1951 and the present suit was brought on 11-8-1953. The question that has arisen on these facts is whether the suit was within time on the date on which it was brought.

4. In Civil Revision No. 40/1956 (hereinafter called the revision), the facts are these. The cause of action arose on 6-6-1944 when the 1945 Act was in force. The first part payment was made on 19-6-1949 when the 1949 Act was in force.

The second part payment was made on 31-5-1950 when the 1950 Act was in force. The suit was filed on 28-5-1953 when the 1951 Act was in force. The question that arises is whether in these circumstances, the suit was within limitation on the date on which it was filed.

5. Before we consider the particular facts of these cases, we should like to make certain general observations as to limitation which will be of help in the peculiar circumstances that have arisen on account of three Acts of Limitation being brought into force in quick succession within three years from 1949 to 1951.

Each of these Acts had a saving clause which we shall consider at the appropriate moment. The first general observation which we wish to make is that the law of limitation which is to apply to a suit brought on a particular date is the Act in force on the date on which the suit is brought and not any earlier Act. So far as this is concerned, we are of opinion that the law is well settled. In *Jeth Mal v. Amb Singh*, ILR (1955). 5 Raj 334: (AIR 1955 Raj 97) (A), the settled law on this point was stated at page 341 (of ILR Raj): (at p. 99 of AIR), in the following words:

"Now, it is firmly settled that the law of limitation relates to the branch of procedural laws and no one can claim a vested right in any period of limitation. It, therefore, follows, without the slight test doubt or dispute, that the law which is applicable to a suit or proceeding is the law which is in force when it is instituted.

Therefore, such laws normally have received and are entitled to receive retrospective force. It is with a view to avoid the hardship resulting from the retrospective operation of such laws that usually when the pre-existing Law of Limitation is amended and the period prescribed thereunder is reduced, the Legislature provides a saving clause in the amending Acts.'

6. This principle applies even to acknowledgments and part payments and in construing, the effect of an acknowledgment or part payment, the law in force on the date of the suit has to be looked into and not the law on the date on which the acknowledgment was made. See *Soni Rani v. Kanhaiya Lal*, ILR 35 All 227 (PC) (B).

We would, however, like to add that that was a case where the question was whether the terms of Section 19 as they were in the Limitation Act of 1877, when the suit was brought, would apply or the terms of a similar provision in the Limitation Act of 1859 would apply and it was held that the terms of Section 19 of the Act of 1877 would apply.

Though, therefore, the principle is that even in cases of acknowledgments and part payments, the terms of the Act in force at the time the suit is brought would apply, it will have to be seen how that principle will work out in the peculiar circumstances where the terms of the section relating to acknowledgment or part payment do not change materially and what happens is that successive Acts of Limitation come into force quickly one after the other making changes in the period of limitation.

7. The second general observation which we wish to make is that the words 'period of limitation prescribed' or similar words occurring in the saving clause or the various sections of the various Limitation Acts mean the period prescribed not only by the articles in the Schedule but also by the sections in the Act.

Here again, we do not think it necessary to consider in detail the authorities in support of this view which is well settled. It will be enough to refer to *Jeth Mal's* case (A), where this point was considered, and it was held that the words 'period of limitation prescribed' meant not only the period prescribed in the First Schedule of the Limitation Act, but also includes the period prescribed by the sections. We

shall, therefore, have to consider the question referred, to us bearing this also in mind.

8. We may also dispose of another point which was raised as to the application of the saving clause in the various Limitation Acts with which we are concerned. It is urged that as the saving clause in each of the Acts began with the words 'Notwithstanding anything herein contained' or similar words, it was not open to read the period prescribed in the section as in any way controlling the period prescribed in the saving clause.

It was pointed out that if the intention was that the period prescribed in the saving clause would also be subject to the provisions contained in the various sections of the Limitation Act, the provision in the saving clause would have been somewhat similar to the provision of Section 3, the relevant portion of which is in these terms:

'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.'

9. It was urged that where the case was governed by the articles in the schedule, Section 3 applied and the court had to decide whether the suit was within limitation and was bound to throw it out if it was not within limitation, but subject to the provisions of Sections 4 to 25.

It is further urged that the saving clause is not subject to the provisions of Sections 4 to 25 and, therefore, those provisions cannot be looked into. We are of opinion that there, is no force in this argument. Even where a suit is filed within the time allowed by the saving clause, the court will have to see under Section 3 whether the suit is within limitation.

If it comes to the conclusion that it is not within limitation, it will dismiss the suit; but this it can only do under Section 3 and under no other section. But before a dismissal can take place under Section 3, the court has to see whether any of the provisions of Sections 4 to 25 come to the rescue of the plaintiff.

If they do, then the suit cannot be dismissed under Section 3. Therefore Section 3 applies to a suit which is filed within the time provided in the saving clause and, it follows that the provisions of Sections 4 to 25 would always have to be considered by the court in such case when deciding under Section 3 whether the suit is to be thrown out as barred by limitation.

10. With these three principles in mind, let us see generally what has happened since these quick changes of law came in Rajasthan. Now the periods provided in the first schedule to the 1945 Act were in many cases longer than the periods provided in the first schedule to the 1949 Act.

In the particular class of cases, with which we are dealing here, the period was six years in the 1945 Act in the schedule, while it was three years in the schedule to the 1949 Act. Therefore, there was obviously a shortening of the period of limitation by the 1949 Act in these cases.

Section 4 of the 1949 Act provided a saving clause in those cases where the period prescribed in the 1949 Act was shorter than the period prescribed under the 1945 Act. The exact meaning of Section 4 of the 1945 Act was considered in Jeth Mal's case (A), and it was held that though the words of Section 4 were somewhat different from the words of Section 30 of the Indian Limitation Act, the intention was more or less the same.

Therefore, when the 1949 Act came into force, it will have to be seen whether the period of limitation was shortened by it as compared to the 1945 Act. Where the 1949 Act shortened the period from six years to three years the saving clause, namely Section 4 of the 1949 Act would apply.

If there was an acknowledgment or part payment before the 1949 Act came into force, a further period of six years under the 1945 Act would run from the date of that acknowledgment. In order to apply the saving clause, each suit has to be considered individually and it has to be seen whether the period of limitation for that suit as prescribed -- whether in the first schedule or in the sections -- has been shortened.

If the period is shortened, the saving clause will apply. Now if there was an acknowledgment or part payment under the 1945 Act by which the period of six years was to run again from the date of part payment, there was clearly a shortening of this period by the 1949 Act.

Therefore, the saving clause in the 1949 Act i.e., Section 4 would apply and the result would be that the suit could be brought either within three years as provided in Section 4 of the Act of 1949 or within the period of limitation according to the law previously in force whichever period expired first. We should like to point out that in doing this, we are not applying the repealed Act in the matter of part payment or acknowledgment.

All that we are considering is the situation on the date when the new Act -- in this case the 1949 Act -- came into force. If on that date the saving clause, namely Section 4 would apply, as we must hold that it did in these cases in view of the decision in Jeth Mal's case (A), the suits could be filed after the coming into force of the 1949 Act, the period being prescribed under Section 4 of the Act.

Now if an acknowledgment or part payment is made during this period provided by Section 4, we do not see why Sections 19 and 20 of the 1949 Act should not be applied and why the party should be forced to bring a suit within the period prescribed by Section 4 of the 1949 Act. The general principle, therefore, is that where there is a period prescribed in the schedule and also a period prescribed in the saving clause and if the suit, though it may not be in time within the schedule, comes within the terms of the saving clause, the acknowledgment or part payment made within the time allowed by the saving clause will always give a fresh starting point of limitation under the Act in force in which the saving clause exists.

Thus, when the change over took place from the 1945 Act to the 1949 Act, if the saving clause applied to the suit, there would be two periods prescribed viz., (i) under the Schedule and (ii) under the Sections of the 1949 Act including Section 4 and any acknowledgment or part payment made within either of the times prescribed would give a starting point for a fresh period of limitation as provided in the first schedule to the 1949 Act according to the terms of Sections 19 and 20 of that Act.

11. Then we come to the change over from the 1949 Act to the 1950 Act which came into force on 25-1-1950. It appears that there was little or no difference in the period of limitation provided in the first schedule of the 1949 Act and in the first schedule of the 1950 Act.

The 1950 Act also had a saving clause namely Section 9. That saving clause, however, reduced the maximum period from three years contained in the 1949 Act to two years, though it again provided that where the period of limitation prescribed by the previous Act is shorter, the shorter period would prevail.

The question therefore arises whether Section 9 of the 1950 Act would apply in these circumstances to suits which would otherwise be barred under the schedule to the 1950 Act. We are of opinion that here again it can be said that the period was shortened in the saving section, though in these particular cases the period was the same in the first schedule, namely three years.

The reason why we say that the period was shortened in the sections is that Section 4 of the 1949 Act provided for the maximum of three years, while Section 9 of the 1950 Act only provided for a maximum of two years. Therefore, the saving clause in the 1950 Act would apply to all suits covered by the saving clause of the 1949 Act as the maximum period in the saving clause of 1950 Act was shorter than the maximum period in the saving clause of the 1949 Act.

Here again, if an acknowledgment or part payment is made within the time prescribed in the saving clause of 1950 Act and in the terms of Sections 19 and 20 of the 1950 Act, it will give a fresh period of limitation for the period provided in the first schedule to the 1950 Act.

12. Then we come to the 1951 Act. In this Act, the saving clause, namely Section 30 of the Indian Limitation Act, as now applied to Rajasthan, was exactly the same as in the 1950 Act. The maximum period in the two cases was the same, namely two years and there was a provision that if the period remaining under the old law was shorter, that period would prevail. The question, therefore, arises whether in these cases the saving clause would apply at all for it only applies to cases where the period is shortened. On prima facie view, it appears as if the saving clause

would not apply because there is no shortening of the period as between the 1950 Act and the 1951 Act. But if we look into the matter deeply, it will be found that there is in fact a shortening of the period prescribed by the 1951 Act.

Now let us take a concrete case which will show how the period is shortened. Let us suppose that under the 1950 Act the suit could be brought upto 24-1-1952 under the maximum period given by the saving clause. When the 1951 Act comes into force, if the saving clause does not apply, the suit becomes barred by time, for it is beyond the period specified in the first schedule and the saving clause according to this argument is of no help.

This means that the period which was running upto 24-1-1952 in the instance taken by us is immediately reduced to nothing. It follows, therefore, that the 1951 Act also shortened the period of limitation, though in this case the shortening would be to zero. Therefore, we must hold that Section 30 of the 1951 Act would apply in such a case as the period is shortened and the litigant can file a suit within two years or within the period under the old law whichever is shorter.

We are of opinion that this is the only reasonable way of looking into the matter, as otherwise the result of the 1951 Act would be that suits which were in time under the 1950 Act would immediately become barred on the passing of the 1951 Act and it could not be the intention of the legislature to bar these suits. It is of course not possible in these cases to apply the principle that the old law of limitation would continue, for that only happens where the law shortening the period of limitation neither provides a saving clause, nor is there an interval between the publication of the law and its coming into force. In the present case, there is a saving clause and if we once hold that there was no shortening of the period of limitation, there is no scope for applying the old law i.e., the 1950 Act.

It could not be the intention of the legislature that such suits should be barred. We must, therefore, interpret Section 30 of the 1951 Act in such a way as to advance the remedy and that way to our mind is to hold that the 1951 Act shortens the period of limitation in such class of cases to nothing and, therefore, the period prescribed in the 1951 Act is shorter than the period prescribed in the 1950 Act and, therefore, Section 30 of the 1951 Act will apply to such cases.

Therefore, if an acknowledgment or part payment is made within the period prescribed by Section 30 of the Indian Limitation Act as contained in the 1951 Act, a fresh period of limitation for three years for suits like these would run.

13. Our answer, therefore, to the question put to us is this. An acknowledgment or part payment to be good and valid must generally speaking be made within the period prescribed by the law of limitation which is in force at the date the suit is brought.

But this does not mean that it will not be good for keeping the right to sue alive, if it was made within the period of limitation which was in force at the time the acknowledgment or part payment was made, up to the date, when the new limitation Act comes into force; thereafter the terms of the new Limitation Act, whether contained in the first schedule or in the sections, including the saving clause, will apply.

If an acknowledgment or part payment is made during the special period of limitation permitted by subsequent Acts i.e., under Section 4 of the Marwar Limitation Act of 1949 or Section 9 of the Rajasthan Limitation Act Adaptation Ordinance of 1950 or Section 30 of the Indian Limitation Act as applied by the Part B States Laws Act, 1951, it will be good to keep the right to sue alive for the period mentioned in the first Schedule or till the Act under which it was made exists whichever is shorter.

It will be good for giving a fresh period of limitation under the Act under which it was made and this period of limitation can be availed of by the plaintiff only so long as the Act, under which the acknowledgment or part payment is made, is in force. As soon as the Act under which the acknowledgment or part payment is made is repealed and replaced by another Act, it is that Act which would apply and the Court will have to look to the saving clause of that Act to see if the right to sue is still surviving on the coming into force of the new Act.

14. We do not think it necessary to consider all the cases cited before us because the exact circumstances, which have arisen from 1949 to 1951 never arose before inasmuch as three limitation Acts in succession did not come into force within

three years. We may, however, refer to *Ambalal Harjivandas v. Jani Chandulal Vidyaram*, AIR 1956 Bom 347 (C) where Gajendragadkar, J., took the same view as we have taken.

That case of course differs from our case in this respect that there, there was only one change in the law and not three in quick succession as in our case. But if we may say so with respect the principle laid down in that case is the same as we have laid down above.

15. Learned counsel for the respondent referred in this connection to *Luvar Chunilal Ichharam v. Luvar Tribhovan Laldas*, ILR 5 Bom 688 (D). It was held in that case that the expression 'period prescribed' in Section 20 of the Limitation Act of 1871 meant the period prescribed by that Act and not the Act of 1859, and it was pointed out that the hardship, if any, of this was mitigated by the postponement of the operation of the Act of 1871 for over two years.

It is enough to point out that the Act of 1871, under which this decision was given, did not contain any saving clause, as is to be found in the Acts with which we are concerned. In the absence of a saving clause, the decision could not be other than what was given in *Luvar Chunilal's* case (D). (See *The Law of Limitation and Prescription* by U.N. Mitra, Vol. I, pages 633 to 642 Tagore Law Lectures 1882 for the text of the Limitation Act of 1871).

16. Let us now apply these principles to the facts of the two cases before us. We shall first take the appeal. In this case the cause of action arose when the 1945 Act was in force on 9-10-1941. The first part payment was made on 9-4-1947 when also the Act of 1945 was in force and thus a fresh period of limitation for six years from 9-4-1947 started.

This would come to end on 8-4-1953. Then came the 1949 Act from 27-3-1949. This Act reduced the period from six years in such cases to three years; but the saving clause contained in Section 4 gave three years or the period under the old Act whichever was less.

Under the old 1945 Act, the period was upto 8-4-1953 and therefore, under the 1949 Act, this suit would become barred on 26-3-1952, for three years period contained in the saving clause was shorter than the period still to run under the 1945 Act. Thus the suit could be brought upto 26-3-1952. Then came the 1950 Act on 25-1-1950.

On that date this suit could be brought upto 26-3-1952. This period was again more than the two years maximum provided by the Act of 1950. Therefore, under the 1950 Act the suit could be brought upto 24-1-1952. Then came the Act of 1951 on 1-4-1951.

Under that Act, the period was shortened, as we have already pointed out, to zero. Therefore, the saving clause would apply and the suit could be brought either within two years or during the period under the old law whichever was shorter. The period under the old law in this case was upto 24-1-1952 which was shorter.

Therefore, the suit in this case could be brought upto 24-1-1952 under Section 30. This was the period prescribed for this suit under Section 30 of the 1951 Act. During this prescribed period there was a part payment on 28-11-1951. Therefore, under Section 20, three years will run from the date of this part payment and the suit would be within time upto 27-11-1954. It was actually filed on 11-8-1953. It was thus within time when it was filed.

17. Turning now to the revision, we find that the cause of action arose on 6-6-1944. Then came the 1949 Act on 27-3-1949 which reduced the period from six years to three years in such cases. Therefore, the saving clause, namely Section 4 of the 1949 Act applied and the suit could be brought upto 5-6-1950 which was the shorter period, the maximum being three years from 27-3-1949.

On 19-6-1949 came the first part payment and a fresh period of three years limitation expiring on 18-6-1952 began. Then came the 1950 Act, The period in this case was expiring on 18-6-1952, but this was longer than the maximum of two years prescribed in the saving clause in that Act. Therefore, the period prescribed under the 1950 Act was from 25-1-1950 to 24-1-1952. During this period there was a part payment on 31-5-1950. So a fresh period of limitation for three years ending

on 30-5-1953 would run. Then came the 1951 Act on 1-4-1951.

This reduced the period under the earlier law to zero and, therefore, the saving clause, as contained in Section 30 of the Limitation Act, applied. That gave two years from 1-4-1951 or the period under the old law whichever was shorter. The period under the old law was to expire on 30-5-1953. Therefore, under the 1951 Act, the period of limitation would, be upto 31-3-1953.

Now, in order that this period be further extended beyond 31-3-1953, there should have been an acknowledgment or part payment within the period prescribed by the 1951 Act i.e., between 1-4-1951 and 31-3-1953. The part payment, which was made on 31-5-1950, would be of no avail under the 1951 Act, for the Act of 1951 only prescribed two periods, namely three successive years from the date the cause of action arose, on 6-6-1944 or the period from 1-4-1951 to 31-3-1953.

There was no part payment within these two periods. Therefore, this suit should have been brought at the latest by 31-3-1953. It was however, brought on 28-5-1953 and was, therefore, barred by limitation.

18. We, therefore, allow Civil Regular Second Appeal No. 313 of 1955 and decree the suit of the plaintiffs for Rs. 3,000/- with costs throughout. The plaintiffs will also get 4 per cent. interest from the date of suit to the date of realization on the principal amount of Rs. 1673/9/3.

19. We dismiss Civil Revision No. 40 of 1956 with costs to the defendants-opposite parties throughout.

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