

S.A.O.S. Karuppan Chettiar Vs. the State of Madras, Represented by the Collector of Thanjavur

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Court : Chennai

Decided On : Apr-04-1960

Reported in : (1960)2MLJ511

Appellant : S.A.O.S. Karuppan Chettiar

Respondent : The State of Madras, Represented by the Collector of Thanjavur

Judgement :

Ramachandra Iyer, J.

1. This is an application to excuse the delay in the presentation of an appeal against the order of the Estates Abolition Tribunal, Vellore, in A.S. No. 216 of 1956. The appeal is filed under Section 7(1) of the Madras Estates Supplementary Act, 1956 (Act XXX of 1956), which shall hereafter be referred to as the Act. The order of the Estates Abolition Tribunal, which in turn set aside the order of the Settlement Officer IV, Tiruchirapalli, held that Inam Kudimeri was not an inam estate within Section 2(7) of the Abolition Act (XXVI of 1948), and that was passed on 15th May, 1957. Madras Act XXX of 1956 came into force on 3rd August, 1957. Under Section 7 of the Act, read with Section 11, a right of appeal is provided against the decisions of the Estate Abolition Tribunal to the Special Appellate Tribunal. Prior to the Act, there was no appeal against such orders. The petitioner,

evidently oblivious of the right conferred, applied to this Court under Article 226 of the Constitution in W.P. No. 725 of 1955 to call for records in A.S. No. 216 of 1956, on the file of the Estates Abolition Tribunal, Vellore, and to quash the order of the Tribunal therein. The Writ Petition was filed on 9th August, 1959. It came up for hearing on 7th August, 1959. An objection appears to have been taken to the maintainability of the petition on the ground that the petitioner had an effective remedy by way of an appeal. The petitioner, thereupon, took time to consider the position, and, under a mistaken impression that the proper remedy was to file an application to the concerned Tribunal under Section 3, filed an application on nth August, 1959 with the Tribunal. Shortly thereafter, that is, 21st August, 1959, the writ petition was withdrawn and dismissed. The petitioner later realised that an application under Section 3 was not the proper way of contesting the order, and that the appropriate remedy was an appeal to the Special Appellate Tribunal, the petitioner filed one on 13th October, 1959. Computing the time from the date of the order of the Estate Abolition Tribunal, there has been a delay of nearly 2 years and 3 months. Under Section 7 of the Act, any person aggrieved by a decision of a Tribunal could file an appeal to the Special Appellate Tribunal consisting of two Judges of the High Court, nominated from time to time by the Chief Justice in that behalf, within a period of two months from the date of the decision. The Special Appellate Tribunal may, in its discretion, allow further time not exceeding three months for filing such an appeal. The effect of the various provisions of the Act is that the decision rendered by the Estates Abolition Tribunal on 15th May, 1957, will be deemed to be one given by a Tribunal constituted under the Act, and the party concerned will have a right of appeal under Section 7(1).

2. Prima facie, however, the appeal is barred by limitation, as it was not presented within two months of the date of the order of the Tribunal; indeed, it could not be filed within that time as the Act had not come into force by then. Nor was it filed within three months thereafter, within which time there is a discretion vested in the Court to excuse the delay in presentation. To get over the difficulty, the learned Counsel for the petitioner invokes the aid of the principle embodied in Section 14 of the Indian Limitation Act; he contends that the petitioner was prosecuting with due diligence and bonafide W.P. No. 725 of 1957 in this Court, from 9th August, 1957 to 21st August, 1959, for obtaining the relief sought in the appeal. If the

petitioner is held entitled to the deduction of the time spent in the prosecution of W.P. No. 725 of 1957, being filed within 5 months of the impugned order, the further time taken for the application under Section 3 was also claimed to be spent bona fide. That question does not arise except for the purpose of exercising this Court's discretion.

3. Section 7 of the Act limits the time, within which the Special Appellate Tribunal could under its discretion excuse any delay. Section 5 of the Limitation Act does not apply to such appeals.

4. In *Krishnaswami Gopanna Manradlar v. Gopanna Manradiar* : (1958)2MLJ275 , an appeal was filed to the Tribunal constituted under the Abolition Act after the amendment of Section 15(2)(a) of Act XXVI of 1948. Prior to the amendment, the Tribunal had an unlimited discretion to grant time for preferring an appeal. But the amendment limited that period to one of six months. It was held that, as on the date when the appeal was presented the powers which the Tribunal had of excusing the delay in the presentation were those contained in the amended section, the Tribunal could not extend the time beyond the period fixed by the amendment.

5. In *State of Madras v. Venkataswami JVaidu* : (1959)2MLJ391 , an application under Section 4 of the Act was filed by the State Government before the Special Appellate Tribunal, 3 days after the time allowed therein. It was held that there was no specific provision in the Madras Act XXX of 1956 which conferred jurisdiction on the Special Appellate Tribunal to condone any delay in filing an application under Section 4 of the Act, nor did the Tribunal possess any inherent jurisdiction to excuse the 'delay in filing an application before it. It was further held that provisions of Section 5 of the Limitation Act would not apply to such cases. In neither of the cases referred to above did any question arise as to how the time has to be reckoned, i.e., whether the applicant was entitled to the exclusion of any time, e.g., those covered by Sections 4 and 9 to 18 of the Limitation Act. In the first case it was contended that the appellant had a vested right to get the delay excused, as, at the time when the proceedings were instituted, the Tribunal had unlimited discretion to extend time. That contention was negatived. In the second,

an application was made to excuse the delay on a ground analogous to that contained in Section 5 of the Limitation Act. That too was negatived. But a case for the exclusion of time on a ground specified in Section 14 of the Limitation Act is not one to excuse a delay in presentation of the appeal. The question is one of computation of time. If the period, during which the Writ Petition was pending in this Court, were to be excluded, the appeal would be within the time.

6. Section 29(2) of the Limitation Act states:

Where any special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law.

(a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply....

(The rest of the section omitted.)

7. It cannot be denied that Madras Act XXX of 1956 will be a special or local law within the meaning of the above provision. The Act does not expressly exclude the application of Sections 4, 9 to 18 and 22 of the Limitation Act. It would, therefore, follow that the provisions of Section 14 will be applicable to the proceedings envisaged in Act XXX of 1956. The learned Additional Government Pleader did not contest that Section 29(2) of the Limitation Act would have the effect of applying the provisions of the various Sections referred to therein to proceedings under Section 7(1) of the Act; but he contended that the provisions of Section 14 of the Limitation Act would not apply by reason of that very terms to an appeal. That section allows exclusion of time only in cases of suits and applications. It stands also to reason that Section 14 should not be extended to appeals. Where a statute gives a right of appeal against the decision of a tribunal, the appeal should be filed

within the time allowed for it. A party cannot at his whim or caprice resort to other proceedings and failing there, come back and obtain an exemption from the operation of the limitation for the appeal; to permit it would be to enable a party to extend the period of limitation and in some cases to adopt dilatory tactics. Indeed it may even be said in such a case, the appellant was not acting bonafide, which is an essential condition for the application of Section 14.

8. It was, however, contended for the petitioner that as Section 29,(2) does not make the provisions of Section 2 of the Limitation Act applicable, the definition of the word 'suit' will be abrogated, and that the ordinary rule that the word 'suit' includes an 'appeal' would prevail, with the result that in all cases of special or illocalaws coming within the former provision, Section 14(1) would apply to appeals as well. There is an obvious fallacy in the contention, Section 29(2) refers to suits, appeals and applications. Section 14 specifically refers to suits and applications and omits any reference to appeals. If the word 'suit' were intended to include an appeal, there is no necessity for Section 29 to refer to it. It is a familiar rule of construction that tautology should not be attributed to the legislature. It should, therefore, follow that suits and appeals and applications are kept distinct in the Limitation Act, as indeed the arrangement of the schedules would show. When Section 14 provides for suits and applications alone, it must be held that the legislature for good reasons did not want to give the benefit of the exclusion of time provided for in Section 14, to appeals.

9. But the question still remains as to what precisely is the nature of the proceedings under Section 7(1) of the Act. It is certainly not a suit, for a suit is one which originates in a plaint. Is it not an appeal or merely an application? It is not uncommon that under certain special statutes, an appeal is dealt with as an application, e.g., Trade Marks Act, Trade Unions Act, etc. On the Original Side of this Court, appeals from the Master's orders are registered only as applications.

10. An appeal, as defined in Wharton's Law Lexicon,

is the removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of inferior Court.

11. Subrahmanya Iyer, J., after referring to the above definition, observed in Chappan v. Mohideen Kuttal : (1898)8MLJ231 .

In consonance with this meaning of the word, appellate jurisdiction means, ' the power of a superior Court to review the decision of the inferior Court.' Here two things which are required to constitute appellate jurisdiction are the existence of superior and inferior Courts and the power on the part of the former to review the decisions of the latter. This has been well put by Story: ' The essential criterion of the appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals, an appellate jurisdiction, therefore, necessarily implies that the subject-matter has been already instituted and acted upon by some other Court whose judgment or proceedings are to be revised.' (Section 1761 of the Commentaries on the Constitution of the United States.)

12. The test laid down by Subrahmanya Iyer, J., will apply, not only to Courts but to a hierarchy of Tribunals established by a statute providing for an appeal from the decision of one to the other.

13. An appeal under Section 7(1) of the Act, if laid against a decision of a Tribunal constituted under Section 5 thereof, will satisfy the two tests referred to above. Such an appeal will not be an application; the provisions of Section 14 of the Limitation Act cannot apply to it.

14. But the position would be different in regard to cases decided by the Tribunal under the Abolition Act. Before the Act, no appeal lay from the decisions rendered under Section 9 of the Abolition Act to the Special Appellate Tribunal. After the passing of the Act, a right to challenge the decision is given both to the Government and the private party. Section 4 provides that the State Government can file an application against the decision of the Tribunal constituted under the Abolition Act for a declaration that any non-ryotwari area is an estate or an inam estate and that such an application would be to the Special Appellate Tribunal under Section 7 and dealt with as an appeal. Section 11(2) provides for cases where the Tribunal under the Abolition Act has given a finding at the commencement of the Act that a particular area is an inam estate. Such a finding

is deemed to be decision given by the Tribunal constituted under the Act and the provisions of Section 7(1) is made applicable. Section 11(2)(b) is the counterpart of Section 4(2)(b). Both deal with the adjudications given by the Tribunal under the Abolition Act. The practice of this Court is to register both types of cases as appeals. The two tests laid down in *Chapan v. Mohideen Kutti* : (1898)8MLJ231 , are not satisfied in that under the Abolition Act the decisions under Section 9 were not subject to any appeal to the Special Appellate Tribunal. Act XXX of 1956 gives a power to the Special Appellate Tribunal to entertain appeals against such order as if it were a decision by the Tribunal under the Act. Section 4 states that the State Government wishing to challenge the decision should file an application. A case under Section 11(2)(b) would be similar. When, therefore, an order of the Tribunal under the Abolition Act is sought to be challenged by way of appeal before the Special Appellate Tribunal, what is filed can be termed an application to set aside an order from which an appeal did not lie when the order was passed; but by virtue of Sections 4 and 11, a jurisdiction is conferred on the Special Appellate Tribunal to hear an appeal from it.

15. It will be noticed that the power given to the Special Appellate Tribunal is wider than that of the Tribunal under the Abolition Act. The latter authority could only decide whether a disputed village was ' an inam estate' coming under the Abolition Act. Though for the purpose of that decision it would have to decide the question whether at all the village was an estate within Section 3(2)(d) of the Estates Land Act, that decision would not be final. The Special Appellate Tribunal sitting in appeal in cases covered by Sections 4 and 11 will have the jurisdiction to decide even that question finally. Ordinarily an Appellate Tribunal's powers are co-extensive with that of the original tribunal. What Sections 4 and 11 have given is something more than a mere appellate power, i.e., partly an original jurisdiction. An ' appeal' under Section 7 read with Section 11 would, therefore, partake the character of an application; the provisions of Section 14(2) of the Limitation Act would therefore apply to it.

16. The learned Additional Government Pleader then contended that the provisions of Section 14 of the Limitation Act will not apply, as it could not be held that this Court was unable to grant the relief in the Writ Petition by reason of any

defect of jurisdiction, this Court could in its discretion have quashed the order of the tribunal under Article 226 of the Constitution notwithstanding the fact that an alternative remedy by way of appeal existed. When, therefore, this Court declined to interfere, it was by virtue of the discretionary nature of the jurisdiction under Article 226. Reliance is placed upon the decision in *Baiznath Lola v. Ramadoss* (1915) 27 M.L.J. 640 : IL.R. 39 Mad. 62, where it was held that time spent to prosecute a revision petition against the order under Section 73, Civil Procedure Code, should not be deducted under Section 14 of the Limitation Act in a subsequent suit that might be brought to set aside the order. It is unnecessary to consider whether, in view of the subsequent decision of a Full Bench of this Court, which defined the nature of the revisional jurisdiction, this decision could be held to be correct. We are of opinion that the present case would be one, coming under the clause 'or other cause of a like nature, is unable to entertain it.'

17. It was next contended that the proceedings under Article 226 could not be said to be civil proceedings within the meaning of Section 14. There is no substance in his contention either. In *Dhanalakshmi Ammal v. Income-tax Officer, Madras* : (1957)2MLJ567 , it was held that, notwithstanding the fact that in proceedings under Article 226 of the Constitution, the High Court did not declare the civil rights of parties or decide disputed questions of title, in proper cases the Courts could enforce such rights in cases of infringements by the issue of prerogative writs, and that the issue of such writs in a matter involving civil rights of parties, would be an order in a civil proceeding. It cannot be doubted the rights involved in W.P. No. 725 of 1957 are civil rights; it would, therefore, be a civil proceeding. These proceedings have been prosecuted bona fide and the petitioner will be entitled to the exclusion of the time taken therein. The appeal will be treated as filed in time, and registered accordingly.