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Court : Chennai

Decided On : Jun-24-1981

Reported in : AIR1983Mad155

Judge : Ramanujam and ;Sethuraman, JJ.

Acts : [Limitation Act, 1963](#) - Sections 30 - Schedule - Article 61; Limitation (Amendment) Act, 1969

Appeal No. : S.A. No. 2061 of 1977

Appellant : N. Chellappan Pillai and anr.

Respondent : A. Anthoni and ors.

Advocate for Pet/Ap. : O.K. Sridevi and ;N. Rajan, Advs.;T.R. Rajagopalan, ; T.R. Rajaraman, ;V. Selvarajan and ;V. Narayanan, Advs.

Judgement :

1. The above second appeal arises out of a suit for redemption and partition filed by the plaintiffs, who are the appellants herein. This suit was based on Ex. A-1, a copy of the othi and kushikkanom deed dated 32-12-1070 M. E. and Ex A-2, a copy of the Purakkadom deed dated 22-11-1088 M. E. 1070 M. E. corresponds to 1895 and 1088 to 1913 of the Gregorian Calendar. The first court passed a preliminary decree allowing the plaintiffs to redeem their 1/8th share on their depositing the proportionate mortgage and Purakkadom amount of Rs. 33.19 and granting them the relief to recover possession of their share from the defendants.

In the appeal the learned Subordinate Judge of Nagarcoil held that the suit ought to have been filed before 1967, and that as it has been filed only on 2-1-1971 it was clearly barred by limitation. The result was that he dismissed the suit and, therefore, the unsuccessful plaintiffs came forward with the present appeal.

2. The appeal originally came before Nainar Sundaram J. who referred to three decisions of this court, which expressed three different views. He was of the opinion that the question raised in this case required an authoritative answer from an appropriate Bench, and therefore, the matter was referred to a Bench.

3. The substantial question on which the second appeal has been admitted is :

"Whether the plaintiffs' suit for redemption is barred by limitation as held by the lower Appellate Court."

The properties are situated in Kanyakumari district, which was a part of the Indian State of Travancore. Till the accession of the said State with the rest of India, the State had enacted its own laws and regulations. Under Art, 136 of the First Schedule to the Travancore Limitation Regulation (VI of 1100) (ME), the period of limitation for redemption of a mortgage was 50 years from when the right to redeem to recover possession accrued. The same regulation contained S. 20(1) providing as follows:-

"If, before the expiration of the period prescribed for the redemption of a mortgage, the mortgagee accepts from the mortgagor a Puravaippu or Purakadom deed creating a further charge on the mortgaged property and duly registered, the prescribed period of limitation shall be computed from the date of such Puravaippu or Purakadom deed."

4. It has already been seen that the mortgage deed is of the year 1895. The period of 50 years for redemption would expire in 1945. By virtue of S. 20 of the Travancore Limitation Regulation, the limitation had to be computed from the date of the Purakadom deed, if there was one subsequent to the mortgage deed.

5. In the present case, as already seen there was a Purakadom deed of the year 1913, and, therefore, a suit could have been filed on or before 1963. Thus in the

present case, it was possible to file a suit for redemption till 1963.

6. Before the expiry of that period of limitation. Parliament enacted the Part B States (Laws) Act 1951 (Central Act 3 of 1951) which came into force on 1st April, 1951. By that Act, several enactments enacted by the Indian Legislature were extended to Part B States and one of the enactments so extended was the Indian Limitation Act of 1908. That Act repealed also the Travancore Limitation Regulation. The result of the extension of the Indian Act was to extend the period of limitation for redemption to 60 years, as that was the period available under the Indian Act 1908. Thus, in the present case, a suit could have been filed in or before 1973.

7. At this stage it is necessary to refer to two provisions of Central Act 3 of 1951. The first is S. 30 thereof, which ran as follows:-

"Notwithstanding anything herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by any law corresponding to this Act in force in a Part B State which is repealed by the Part B States (Laws) Act 1951 (3 of 1951) may be instituted within the period of two year next after the coming into force of this Act in that Part B State or within the period prescribed for such suit by such corresponding law, whichever period expires first."

It may be seen that this provision applies to causes where the consequences of the application of the Indian Act reduced the period of limitation from what was available under to State regulation. In the present case, the period available under the State Regulation was 50 years and that under the Indian Act was 60 years. The consequence of the introduction of the Indian Act of 1908 was to extend the period and not to reduce the period of limitation; S. 30 would have no scope for application and, therefore, there was no obligation on the part of the plaintiffs to institute a suit within the period of two years contemplated by S. 30.

8. The other provision to which reference requires to be made is Sec. 6 of the Central Act 3 of 1951, which to the extent relevant runs as follows:-

"If immediately before the appointed day there is in force in any Par B State any law corresponding to any of the Act or Ordinances now extended to that State, that law shall save as otherwise expressly provided in this Act, stand repealed:

Provided that the repeal shall not affect- (a) the previous operation of any law so repealed or any thing duly done or suffered thereunder, or (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or (c) (d) There is also a proviso which is not relevant for our present purpose. It is necessary to emphasise here that Parliament had considered it necessary to specifically enact S. 6 of Central Act 3 of 1951, even though in the case of a repeal, there is a similar provision available already under the General Clauses Act. By reason of S. 6 of Central Act 3 of 1951, any right acquired under the repealed law is saved and preserved.

9. Section 61 of the Transfer of Property Act, which was also extended to the erstwhile Travancore state, provided for consolidation of mortgages by Central Act 20 of 1929. Sec. 61 before the 1929 amendment ran as follows:-

"A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying the money due under any separate mortgage made by him or by any person through whom he claim, on property other than that comprised in the mortgage which he seeks to redeem."

Section 61 after the 1929 amendment runs as follows:-

"A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

10. While under the unamended law, it was necessary for the mortgagor, who had executed several mortgages in favour of the same mortgagee over the same property, to redeem all of them together, under the amended law, he is entitled to redeem any of them without at the same time redeeming the others. Thus, the

principle of consolidation, which was available up to 1929 amendment, was taken away by the Act. In view of the specific provision in Sec 6 of Central Act 3 of 1951, the right which had been acquired by the two mortgages, or had accrued in favour of the mortgagee to insist on the mortgage as well as the purakadom having redeemed together was not affected by the Central Act 3 of 1951.

11. The normal rule is that the law of limitation applicable to the suit is the law in force at the date of the institution of the suit. See *Syed Yousuf v. Syed Mohammed*, . There is equally a well-known principle that retrospective operation ought not to be given to a statute so as to take away vested rights, unless that effect cannot be avoided without doing violence to the language of the enactment, and that except in special cases, the new law ought to be construed so as to interfere as little as possible with vested rights. See *Rajah of Pittapur v. Venkatasubba Rao*, (1916) ILR 39 Mad 645 : (AIR 1916 Mad 912) (FB). Thus even in the absence of Sec. 6 of Central Act 3 of 1961, that Act be taken as affecting the vested rights available under the Travancore Limitation Regulation. In effect, the period of limitation had to be counted from the date of the Purakadom. The position is a fortiori because of Sec. 6, which preserves the continuance of the vested rights acquired under the repealed statute.

12. The Indian Limitation Act, 1908, was substituted by the [Limitation Act, 1963](#). Under the new Limitation Act, the period of redemption of mortgages was reduced to 30 years. A special provision was, however, made in Sec. 30 of the 1963 Act. reading as follows:-

"Notwithstanding anything contained in this Act..... (a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier....."

13. The period of seven years was substituted for five years by the Limitation (Amendment) Act, 1969 (10 of 1969) and the provision is deemed to have been so enacted from the commencement. Thus the plaintiffs had a period of seven years from 1st April, 1964, when the Indian Limitation Act of 1963 came into force. The

period of seven years would thus expire on 31st March, 1971, and the suit was filed on 2nd January, 1971.

14. In the light of the above discussion, the plaintiffs had an extended period of limitation from the date of Purakadom notwithstanding Parliament extending the Indian Act to the erstwhile Travancore territory, and by reason of S. 30 of the Limitation Act of 1963, the plaintiffs could institute a suit on or before 31st March, 1971.

15. We may now examine the three decisions which are cited in the order of reference by Nainar Sundaram J. The earliest decision chronologically is that of Mohan J. in *Thomas v. Victor*, (1976) 2 Mad LJ 5 : (AIR 1976 Mad 273). This judgment is dated 19-9-1975. In that case, the suit property was mortgaged on 3-2-1076 (M.E.) and there was a Purakadom on 7-4-1093 (M. E.). The Purakadom stated inter alia that the possession under the mortgage was to be on the basis of the Purakadom alone. In 1966 the plaintiff in that case filed a suit for redemption of the mortgage of 1076 and the Purakadom of 1093. He was faced with the defence that the suit was time barred. The learned Judge held that the right to consolidation was a vested right and that in view of the recitals in the Purakadom, the two mortgages would be consolidated so that piecemeal redemption was impossible. The learned Judge relied on *Nachiappa Goundan v. Samiappa Goundan*, (1946) 2 Mad LJ 35 : (AIR 1947 Mad 18) in support of his view, that the right of consolidation was not a mere right to have the advantage of an existing status and that it was a vested right in property. There is nothing in this decision which runs counter to the view that we are taking. We do not, therefore, think it necessary to refer to this decision more elaborately.

16. The next one is the decision of Varadarajan J. as he then was in *Parameswaran Thambi v. Kanakamma Thankachi*, (1977) 90 Mad LW 258, the judgment having been pronounced on 2-12-1975. In that case, there was a mortgage of 1886 and a subsequent charge of 1915 in favour of the mortgagee. The suit was filed in 1969 for redemption (the documents refer to the years in Malayalam Era). The defence was that the suit was barred by limitation. The learned Judge was of the view that after the Amendment Act 20 of 1929,

amending S. 61 of the Transfer of Property Act, the mortgagee was not entitled to insist on the mortgagor redeeming the subsequent charge. In the view of the learned Judge:-

"Therefore after the Amendment Act 28 of 1929, the mortgagee was not entitled to insist on the mortgagor redeeming the charge created under the original of Ex. A-2, before he could redeem the mortgage created under Ex. A-1. Therefore, it would follow that after the Limitation Act, 1908 had been made applicable to the area concerned by the Part B States (Laws) Act III of 1951, in the absence of any provision, in the Limitation Act 1908 corresponding to Sec. 20 of the Limitation Regulation VI of 1100 M.E., it was open to the mortgagor to redeem the mortgage covered by Ex. A-1 alone (of the year 1886) and it was not open to the mortgagee to insist on the redemption of the charge created by the original of Ex. A-2 (of the year 1915), before the mortgagor could be allowed to redeem the mortgage covered by Ex. A-1. the Limitation Act, 1908, had been made applicable to the area with effect from 1st April, 1951 and the mortgagor has to redeem the mortgage covered by Ex. A-1 within sixty years from the date of its execution, namely, 25th June 1886 and the suit filed only in 1969 is clearly barred by limitation....."

Though reference appears to have been made to Sec. 6 of the Part B States (Laws) Act at page 260 of the judgment, the effect of that provision does not appear to have been properly appreciated. Sec. 6 as given in the judgment proceeds as if there was a mere repeal without the saving to which we have made reference earlier. As the Part B States (Laws) Act (III of 1951) has preserved the rights acquired under S. 20 of the Travancore Limitation Regulation, which is a vested right, the operation of Sec. 20 would continue with reference to this instrument. The Supreme Court has pointed out in the State of Punjab v. Mohan Singh Pratap Singh. AIR 1955 SC 84 at page 88-

"Whenever there is a repeal of an enactment the consequences laid down in S. 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the

provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that S. 6 of the General Clauses Act, is ruled out when there is repeal of an enactment followed by a fresh legislation. S. 6 would be applicable to such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of Sec. 6."

Thus, the line of enquiry, as to the consequence of the introduction of the Indian Law by the Central Act 3 of 1951 is to find out whether it manifests an intention to destroy the old rights acquired under the Travancore Limitation Regulation. S. 6 of the same Act itself manifests an intention not to destroy these rights. Consequently, the absence of a provision corresponding to S. 20 of the Travancore Limitation Regulation in the extended Indian Law will not have the effect of confiscating the rights acquired by the plaintiffs. We are, therefore, unable with respect to agree with the view which commended itself to the learned Judge in *Parameswaran Thambi v. Kanakamma Thankachi*. (1977) 90 Mad LW 258.

17. The last decision is that of Ismail J. as he then was in *Ponniah Nadar v. Thaveethu Nadar*. (1979) 92 Mad LW 158. In that case also, there was a mortgage of 1859 followed by a Purakadom of 1908. The suit for redemption was filed in 1964. It was held that the suit was not barred by limitation and the reasoning of the learned Judge is that there is nothing either in the Indian Limitation Act, 1908 or in the provisions contained in the Central Act III of 1951, to take away or destroy the right available to the plaintiff under Sec. 20 of the Travancore Limitation Regulation that consequently notwithstanding the repeal of the Travancore Limitation Regulation and the extension of the Indian Limitation Act, 1908, to the area in question, the mortgagor was held to have the right to compute the period of limitation prescribed by the Indian Limitation Act from the date of the Purakadom, that is from 1909. As the suit was filed in 1964, it was held that it was within time. We agree with the reasoning and conclusion of the learned Judge with respect. The result is we restore the decision of the trial Court decreeing the suit

and reverse the decision of the lower Appellate Court. The appeal is accordingly allowed. There will be no order as to costs.

18. Appeal allowed.

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