State Vs. Sadh Ram

State Vs. Sadh Ram

SooperKanoon Citation : sooperkanoon.com/889608

Court : Himachal Pradesh

Decided On : Jan-17-1973

Reported in : AIR1973HP76

Judge : R.S. Pathak, C.J. and D.B. Lal, J.

Acts : Limitation Act, 1963 - Schedule - Article 100; ;Himachal Pradesh Abolition of Big Land Estates and Land Reforms Rules, 1955 - Rule 16; ;Himachal Pradesh Abolition of Big Land Estates and Land Reforms Act - Section 27

Appeal No. : First Appeal No. 8 of 1970

Appellant : State

Respondent : Sadh Ram

Advocate for Def. : H.S. Thakur, Adv.

Advocate for Pet/Ap. : B. Sita Ram, Adv. General

Disposition : Appeal allowed

Judgement :

D.B. Lal, J.

1. This first appeal has been brought by defendant the Union of India from the judgment dated 30thJune, 1970 of the Senior Sub-Judge. Mahasu, wherein the

suit of the plaintiffs Sadh Bam and four others for a declaration as to their right of ownership for trees growing over 92.4 bigha area comprising in six Khasra numbers, situate in village Deha, Pargana Shilla, Tehsil Theog. is decreed.

2. The plaintiffs' case before the learned Senior Sub-Judge was. that they were tenants of the disputed land of which the proprietary rights had vested in the State Government under Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. 1953 (hereinafter to be referred as the Abolition Act. 1953). Under Sub-section (4) of Section 27. the right, title and interest of the land-owner, namely, the State Government, were to be transferred to the tenants who cultivated the land. The plaintiffs claim to be such tenants and therefore applied to the Compensation Officer for transfer of right, title and interest of the land-owner- By his order dated 3rd October. 1969, the Compensation Officer, before whom the proceedings lay for transfer of proprietary rights, granted the prayer of the plaintiffs, but. in his order, specifically mentioned that the trees growing over such land would not be transferred and remain the property of the Government Subsequently mutation entries were made in favour of the plaintiff-respondents. They were also granted a certificate of ownership in form 'K' under Rule 16 of the Rules framed under the Abolition Act. 1953. According to the plaintiff-respondents, they were in possession over the land and were even appropriating the trees but the officers of the Forest Department of the Government intervened and did not permit them to interfere with the trees which, according to them, belong to the Government for which specific mention was made in the order of the Compensation Officer. In this manner, the plaintiff-respondents were interfered in their possession over trees and they brought the suit for the relief of declaration that they were owners of such trees on the basis of the order of the Compensation Officer dated 13th March. 1967 as well as on the basis of the ownership certificate granted to them thereafter. The plaintiff-respondents further prayed that the defendant-appellant be held not to possess any right to interfere with the unfettered use and enjoyment of trees by the plaintiffs. The defendant-appellant contested the suit, inter alia, on the two preliminary objections, namely limitation and maintainability of the suit for a mere declaration when court-fee was not paid for the relief of injunction which was put in the plaint under guardsed language so as to give it a colour of declaration. The

learned Senior Sub-Judge found these preliminary objections in favour of the plaintiff-respondents. It was held that the order of the Compensation Officer did not stand in the way of the plaintiffs and they could ignore it. As such, according to the trial Court, Article 100 of the Limitation Act did not apply. The case, rather, fell under Article 113 and. as stated by the learned trial Judge, six years' period of limitation was available. As such it was held that the suit was within tune. As to the objection regarding court-fee and jurisdiction, the learned trial Judge held that the suit was maintainable barely for the relief of declaration.

3. The defendant-appellant has come up before us in first appeal, and the learned Advocate-General has canvassed that the suit was clearly time-barred as it fell within the ambit of Article 100 and the plaintiffs could not do without getting rid of the order of the Compensation Officer dated 13th March, 1967 for which the limitation was one year. The learned Advocate-General has further contended, that the plaintiffs had already asked the relief of injunction in the plaint although they worded that relief in a manner so that it looked as if a declaration was sought for, although its substance is nothing less than an injunction prayed against the defendant.

4. A perusal of the judgment of the learned trial Judge would indicate that he applied Article 120 of the old Limitation Act which is a residuary article and 6-years period of limitation was prescribed. The learned trial Judge forgot that the new Limitation Act of 1963 was applicable and if at all the residuary article was to be applied, it is Article 113 of the new Act and the period of limitation is only 3 years and not 6 years. It appears, the learned trial Judge was not aware of the provisions of the amended Limitation Act and that Js the reason he misdirected himself as to the correct article of the Limitation Act which was applicable to the facts and circumstances of the case.

5. The plaintiff-respondents very much contended in their plaint that the order of the learned Compensation Officer was wrong inasmuch as the direction was given in it that the trees belong to Government and that such an order was contrary to law and even without jurisdiction. This contention was reflected in the relief (b) of the plaint where it was observed that the order of the Compensation Officer

regarding trees was without jurisdiction and hence was inoperative. Therefore, the plaintiff-respondents had asked the relief of setting aside that order of the learned Compensation Officer. The frame of the suit was itself made for that purpose and it cannot be stated that the plaintiff-respondents had ignored the order of the learned Compensation Officer end need not have prayed for setting aside that order. Apart from this, it would be a matter for decision as to whether the impugned order of the Compensation Officer was without jurisdiction and hence a nullity so that in the eye of law no such order existed and there was nothing to be set aside. It is on the basis of this very order that the title is claimed by the plaintiff-respondents. They were conferred ownership rights by this order and they cannot do without it even from (for?) claiming a right over the trees. It is difficult to believe that the plaintiffs can seek the relief they want without setting aside the order of the Compensation Officer. As we have already stated, in the plaint itself a relief has been claimed for setting aside that order, although it had been couched in a guarded language. Whether or not the suit wants to set aside the order is to be determined not from the form of relief which the plaintiffs have chosen to put but from the substance of the claim. It could not be stated that the impugned order did not affect the rights of the plaintiffs for some such reason that the plaintiffs were not a party to the proceeding, or that the order itself left open or did not refer the right of the plaintiffs in respect of trees. The crux of the questions lies in the decision as to whether the order is a nullity as made without jurisdiction. The order made by the Compensation Officer was clearly a bar to the relief claimed and the suit must fail if that bar is not removed. There is a distinction between want of jurisdiction and excess of jurisdiction. Where the officer has no jurisdiction at all. the act would be ultra vires; but where, on investigation of circumstances which would give him jurisdiction, the offcer decides or acts in a particular manner any mistake as to the facts of the deciding factor would not oust his jurisdiction. The learned Compensation Officer may have given a wrong order which, according to the respondents, was not in consonance with the decision of the Supreme Court in Divisional Forest Officer. Sarahan v Daut. AIR 1968 SC 612. In that decision, the learned Judges of the Supreme Court no doubt held that while conferring ownership rights to a cultivatory tenant under Section 26 (4) of the Abolition Act. 1953. the entire right, title and interest of the land-owner, in the land is transferred.

According to their Lordships, such right, title and interest in the land, very well included thetrees growing over such land. In the case before their Lordships, the compensation Officer did not exclude the trees from passing over to the tenants. In the case before us, the Compensation Officer has excluded the trees and that has made the order to be the direct subject-matter of decision. Unless the direction of the Compessation Officer is set aside, no relief can be granted to the plaintiffs. It could however be stated that the direction as to trees given by the learned Compensation Officer was wrong and is against the verdict of their Lordships of the Supreme Court, but it is entirely a different question to canvass that the said order was a nullity or without jurisdiction. It could very well be stated then, that the order passed by the Compensation Officer was a wrong order and the impediment created by such order was required to be removed by the plain-tiffs and hence they came to Court and filed the suit. The order per se affected the rights of the plaintiffs. It was a case of wrongful exercise of jurisdiction and not a case of want of jurisdiction.

6. The learned counsel for the respondents then argued that a certificate of ownership was granted in favour of the plaintiffs under Rule 16 of the rules framed under the Abolition Act, 1953. In that certificate a bare mention was made that the plaintiffs became owner of the land. Neither it was stated that the trees were excluded from ownership nor it was stated that the trees were not excluded. If the order itself did not grant ownership of trees, how could the certificate confer such ownership It is difficult to understand that the plaintiff-respondents derived any title merely by the certificate independent of the order made by the Compensation Officer. In a case reported in Mithoo Shahani v. Union of India, AIR 1964 SC 1536 their Lordships had the occasion to consider the validity of a 'sanad' granted as a result to the order of allotment made under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It was held that the 'Sanad' could be lawfully issued only on the basis of the valid order of allotment. If the order of allotment which was the basis upon which the grant was made was set aside, it would follow, and the conclusion was inescapable, that the grant could not survive. Similarly, in the instant case, if the order of the Compensation Officer' denied the ownership of the trees, the same could not be deemed conferred under the certificate issued as a result to that order. The plaintiff-respondents were really called upon to get set

aside that part of the order under which they were refused ownership of the trees and only then they could base their title on the certificate which wassubsequently granted. In this connection, we rely very much upon an observation made by the Lahore High Court in Gangu v. Maharaj Chand. AIR 1934 Lah 384 (FB) which is to the following effect:--

'If it is necessary for a plaintiff toget rid of an order made by an, officer ofthe Government which stands in his waybefore he can obtain a certain relief andin order to obtain that relief he doesnot expressly ask for the setting aside ofthe order but merely for a declaratorydecree still the suit should be deemed tobe one to set aside an order falling within the ambit of Article 14.'

In the case before us, the plaintiffs have taken the precaution of drafting their relief in a manner so that a declaration is sought for. but in fact they want to get rid of the order made by the Compensation Officer. As such, in our opinion. Article 100 of the Limitation Act was applicable and the suit being one to set aside the order of the Compensation Officer the limitation within which such suit could be brought was one year from the date of the order. The suit having been filed beyond the period of limitation was clearly time-barred.

7. To us it also appears manifest that the plaintiff-respondents asked for the relief of injunction in the very plaint because they stated in relief (b) that the Government was not entitled to interfere with the enjoyment of the plaintiffs of the trees standing on the land. Elsewhere in the plaint also, the plaintiff-respondents gave out facts which disclosed a cause of action in their favour when the officers of the defendant interfered with their rights to deal with the trees as owners. Therefore, the suit was in fact for injunction and under Section 7 (iv) (c) or (d) of the Himachal Pradesh Court-fees Act, 1968 the suit was to be valued according to the amount at which the relief sought for was valued in the plaint and the Court-fee was payable on such amount. The plaintiffs have put the valuation at Rs. 5,500/- and as such the Court-fee paid was also deficient. Since we are proposing to allow the appeal and dismiss the suit on the question of limitation, we do not consider it worthwhile to make an order for payment of Court-fee.

8. The appeal is allowed and the Judgment and decree of learned Senior Sub-Judge. Mahasu, are set aside. The plaintiff's suit shall stand dismissed, with costs all throughout to the appellant.

R.S. Pathak, C.J.

9. I agree with my brother D. B. Lal, that the appeal must be allowed.

10. Having regard to the pleadings set out in the plaint it is clear thatthe plaintiffs were attempting to seek relief against the order of the Compensation Officer in so far as it recorded that the trees would remain the property of the Government. The plaintiffs claimed the reliefs in the suit, a declaration that they are the owners of the areas transferred to them under Section 27 (4) of the Himachal Pradesh. Abolition of Big Landed Estates and Land Reforms Act and of all the trees standing thereon and a declaration that the Forest Officials and other departments of the Himachal Pradesh Government were not entitled to interfere with the plaintiffs' use and enjoyment of the trees and that the observation of the Compensation Officer in his order that the trees remained the property of the Government was without jurisdiction and illegal. It is plain that the second relief claimed by the plaintiffs, although dressed up in such language as to pass off for a relief of declaration, is in substance and effect nothing but a relief for setting aside the order of the Compensation Officer. The Compensation Officer had ab initio jurisdiction to make the order and if the portion of the order recording that the trees remained the property of the Government can be assailed at all it can only be challenged as contrary to law. This is not a case where the order made by the Compensation Officer is a nullity. If the Compensation Officer had ab initio no jurisdiction to take the proceeding and make an order therein, he would have no jurisdiction to make any order at all. In that event, the entire order made by him. including that part of it which is in favour of the plaintiffs, would be a nullity. It was necessary, in my opinion, for the plaintiffs to have the portion of the order of the Compensation Officer, which they challenge as invalid, set aside by a Court of law. And that is what the plaintiffs attempted to by filing the suit. Where they have failed, in my opinion, is in the attempt to avoid the bar of limitation by framing the relief in language intended to show that a mere relief for declaration was being

claimed. It is a case such. as was decided by a Full Bench of the Lahore High Court in AIR 1934 Lah 384-Article 100 of the Limitation Act, 1963 provides that the period of limitation for a suit 'to alter or set aside any decision or order of a Civil Court in any proceeding other than a suit or any act or order of an officer of Government in his official capacity' is one year 'from the date of the final decision or order by the Court or the date of the act or order of the officer, as the case may be'. The relief contemplated by Article 100 is the relief which in effect and substance is claimed by the plaintiffs in the presentsuit. As regards that relief, the suit is clearly barred by limitation.

11. The only relief which remains is the declaration sought by the plaintiffs that they are the owners of the areas transferred to them under Section 27 (4) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act and of all the trees standing thereon, That declaration cannot be granted to them unless the portion of the Compensation Officer's order, which they challenge as invalid, is set aside. As that is not possible now because of the bar of limitation, the remaining relief sought by them must also be refused. The title to the trees would flow to the plaintiffs from an order made by the Compensation Officer. An order to the contrary was in fad made, and the validity of that order can-not be challenged because of limitation, Accordingly, the entire suit must fail.

12. The appeal is allowed, the judgment and decree of the learned Senior Subordinate Judge, Mahasu. are set aside and the suit is dismissed. The appellant is entitled to his costs throughout.