A BHAG MAL (ALIAS) RAM BUX AND ORS.

v.

MUNSHI (D) BY LRS. AND ORS.

JANUARY 17, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Punjab Limitation (Custom) Act, 1920 :

Article 2(b)—Suit for declaration, decreed—During pendency of appeal, plaintiffs-Appellants and defendant died—LRs. of defendant not C *brought on record—Order of abatement passed—As a result, appellant inherited suit property—Second suit for possession by appellants—Challenged on the ground that second suit was not filed within 3 years from the date of declaratory decree and was barred by time—Held, Time limit began from date of order of abatement and not from the date of declaratory decree—Order of abatement although not amounts to passing* D *of decree on merits but it attains finality and gives rise to fresh cause of action—On facts, Suit not barred by time.*

Appellants are sons of one 'S'. 'S' alienated the suit property to one 'B' by a registered sale deed dated 24.7.1953. The legality of the said sale deed was questioned, on the premise that the same had been executed E **without any consideration and legal necessity by the appellants, who are the legal heirs and representatives of the said 'S' by filing a suit. The said suit was dismissed. However, on an appeal preferred thereagainst by the appellants, the same was decreed. A Second Appeal thereagainst was preferred by the respondents 'S' died during the pendency of the Second** F **Appeal on 25.2.1973. 'B' also died during the pendency thereof on 4.10.1976.**

As the heirs and/or legal representatives of 'B' were not brought on record within the prescribed period of limitation, the appeal was dismissed as having abated by an order dated 14.10.77. After the death of 'B', the appellants inherited the suit land.

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On 3.11.1977, appellants filed suit for possession in terms of the Punjab Limitation (Custom) Act, 1920. The said suit was decreed. The appeal preferred thereagainst was dismissed.

In the Second Appeal preferred by the respondents, the question which H **arose for consideration before the High Court was as to whether having**

regard to the fact that the order dated 14.10.1977 in terms whereof abatement of the Second Appeal was recorded being not a decree within the meaning of Order XXII of the CPC, the appellants were obligated to file a suit within a period of three years from the date of the judgment and decree passed by the First Appellate Court or not. High Court held in favour of respondents.

In appeal to this Court, appellant contended that the High Court fell into an error in passing the impugned judgment and decree so far as it failed to take into consideration that abatement of an appeal before the High Court gave rise to a cause of action for filing a suit for possession.

Respondents contended that the Court cannot extend the period of limitation and in any event, the order of abatement of a suit/appeal being not a final order of adjudication under Article (2)(b) of 1920 Act, a fresh suit will not be maintainable.

Allowing the appeal, the Court

HELD : 1. The High Court was not correct in holding that the suit of the appellants was barred by limitation. [Para 32] [1126-G]

2.1. The Punjab Limitation (Custom) Act, 1920 was enacted to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointment of heirs by persons who follow custom in Punjab. It is not disputed that the provisions of the said Act would be applicable in the instant case, being a special law operating in the field. [Para 9] [1119-C-D]

2.2. The provisions of Article 2(b) of the Act provides for two starting points of limitation; (1) the date on which the right to sue accures and (2) the date on which declaratory decree is obtained, whichever is latter. There is, therefore, no fixed period of limitation. The period of limitation, thus, would be reckoned from the date on which the right to sue has accrued or declaratory decree is obtained. [Para 12] [1120-E-F]

3. The appellants are in possession of the suit property. Respondents filed a Second Appeal. During pendency of the Second Appeal. both the parties to the deed of sale dated 24.7.1953, died. It has not been disputed

A that an application for substitution was required to be filed so a to save the appeal from having become abated within the prescribed period of limitation. The heirs and legal representatives of 'S' were not necessary to be brought on record as they were already on record. However, legal heirs and/or representatives of 'B', namely, the respondents were required to be brought on record by them. Thus, requirements of the law to bring the heirs and
B legal representatives of the deceased on records, were not complied with.

[Paras 13, 15] [1120-F-H, 1121-C]

4. In circumstances where no such proceedings is initiated under Order XII R. 9(2) the abatement culminates into finally fixing the outcome
C of the suit. In that event the decision gains final shape at the precise juncture of successful abatement and that point serves as the closure of suit. Therefore the order of abatement gives a new starting point for the period of limitation. [Para 25] [1124-H, 1125-A]

D *Abdulla Asghar Alia and Ors.* v. *Ganesh Das Vig,* AIR (1933) PC 68, relied on.

Ajudhia Prasad v. *The U.P. Government,* AIR (1947) Allahabad 390; *Shyam Sundar Sarma* v. *Pannalal Jaiswal and Ors.,* [2005] 1 SCC 436; *Union of India and Others* v. *West Coast Paper Mills Ltd. and Anr.,* [2004]
E 2 SCC 747, referred to.

5. The provisions of statute of limitation cannot be construed in a pedantic manner. Had the appeal been dismissed on merit, indisputably the period of limitation would have started from the date of dismissal of the
F Second Appeal. The respondents themselves preferred an appeal. The appeal was a continuation of a suit. Appellants could not, thus, have been held to be aware of the fact that during pendency thereon 'B' would die or the appeal shall abate. The law, cannot be construed in manner which would defeat the ends of justice. [Para 26] [1125-B-C]

G 6. When an appeal/suit abates, the same may not amount to adjudication of a decree on merit but indisputably it would attain finality. Decision on merits is not the only test to determine the finality of decision. The declaratory decree, in that view of the matter passed in favour of the respondents had attained finality only when the order dated 14.10.1977 was
H passed. [Para 27] [1125-D-E]

Kunhayammed and Ors. **v.** *State of Kerala & Anr.,* **[2000] 6 SCC 359;** *Mithailal Dalsangar Singh and Ors.* **v.** *Annabai Devram Kini and Ors.,* **AIR (2003) SC 4244;** *Sohan Lal* **v.** *Raghunath Prasad and Ors.,* **AIR (1981) Allahabad 235, referred to.**

Harendra Lal Roy Chowdhuri **v.** *Haridasi Debi and Ors.,* **AIR (1914) PC 67, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2370 of 1998.

From the Judgment and Order dated 2.5.1997 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 1951/1979.

Sunil Kumar, Sr. Adv., Amit Kumar, Rekha Bakshi, Kumar Brijnandan for the Appellants.

Balbir Singh Gupta for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J : 1. Interpretation of the provisions of the Punjab Limitation (Custom) Act, 1920 falls for our consideration in this appeal which arises out of a judgment and decree dated 2.5.1997 passed by a learned Single Judge of the Punjab and Haryana High Court in RSA No.1951/79 reversing the judgment and decree dated 26.3.1979 whereby affirming the judgment and decree passed by the Subordinate Judge (Second Class), Gurgaon dated 4.11.1978 decreeing the suit of the appellants herein in possession of 1102/1615 share of the agricultural land as specified in para no.1 of the plaint, was affirmed.

2. The fact of the matter is not in dispute. Appellants are sons of one Sher Singh. Sher Singh alienated the suit property to one Bansi by a registered deed of sale dated 24.7.1953. The legality or validity of the said deed of sale came to be questioned, *inter alia*, on the premise that the same had been executed without any consideration and legal necessity by the appellants herein, who are the legal heirs and representatives of the said Sher Singh by filing a suit. The said suit was dismissed. However, on an appeal preferred thereagainst by the appellants, the same was decreed by a judgment and decree dated 11.4.1969. A Second Appeal thereagainst was preferred by the respondents herein before the High Court which was marked as RSA 1121 of 1969.

A 3. Sher Singh died during the pendency of the Second Appeal on 25.2.1973. Bansi also died during the pendency thereof on 4.10.1976.

4. As the heirs and/or legal representatives of Bansi were not brought on record within the prescribed period of limitation, the appeal was dismissed as having abated by an order dated 14.10.77. After the death of Bansi, B therefore, the appellants herein inherited the suit land. A suit for possession in terms of the Punjab Limitation (Custom) Act, 1920 was filed by the appellants herein on 3.11.1977 before the Sub-Judge, IInd Class Gurgaon. The said suit was decreed. The appeal preferred theregainst was dismissed by a judgment and decree dated 26.3.1979. In the Second Appeal preferred C by the respondents herein, the question which arose for consideration before the High Court was as to whether having regard to the fact that the order dated 14.10.1977 in terms whereof abatement of the Second Appeal was recorded being not a decree within the meaning of Order XXII of the CPC, the appellants were obligated to file a suit within a period of three years from the date of the judgment and decree passed by the First Appellate D Court or not.

5. Opining that an order directing abatement of suit/appeal does not amount to adjudication thereof on merit, it was held that the period of limitation would start running from 11.4.1969, stating :

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> "Therefore, I find that the learned counsel for the appellants has rightly argued that both the Courts below fell in error in arriving at a conclusion that the decrees passed by the Courts below had merged with the decree of this Court and that period of limitation is to be reckoned from October 14, 1977 when Judgment Exhibit P4 F was rendered. February 25, 1973 when Sher Singh died is the date later than April 11, 1969 when the respondents obtained decree from the learned Additional District Judge,Gurgaon.Therefore, even if period of limitation is reckoned from February 25, 1973, that period of three years for filing a declaratory suit came to an end long before November 3, 1977 when the suit was filed by the G respondents. Hence, the suit filed by the respondents was clearly barred by limitation and on that score, deserved to be dismissed. The view taken by the Courts below ie erroneous in the eye of law and cannot be allowed to sustain."

H 6. The appellants are, thus, before us.

7. Submission of Mr. Sunil Kumar, learned senior counsel appearing on behalf of the appellants in support of the appeal is that the High Court fell into an error in passing the impugned judgment and decree so far as it failed to take into consideration that abatement of an appeal before the High Court gave rise to a cause of action for filing a suit for possession.

8. Mr. Gupta, learned counsel appearing on behalf of the respondent on the other hand would submit that the Court cannot extend the period of limitation and in any event, the order of abatement of a suit/appeal being not a final order of adjudication under Article (2)(b) of 1920 Act, a fresh suit will not be maintainable.

9. The Punjab Limitation (Custom) Act, 1920 (The said Act) was enacted to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointment of heirs by persons who follow custom in Punjab. It is not disputed before us that the provisions of the said Act would be applicable in the instant case, being a special law operating in the field.

Section 8 of the said Act reads as under:

> "8. Benefit of declaratory decree: When any person obtains a decree declaring that an alienation of ancestral immovable property or the appointment of an heir is not binding on him according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of an heir."

Article 2 appended to the Schedule of the said Act reads as follows:

"2.	A Suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom		
	(a) if no declaratory decree of the nature referred to in Article I is obtained.	6 years	As above

	(b) if such declaratory decree is obtained	3 years	The date on which the right to sue accrues or the date on which declaratory decree is obtained, whichever is latter."

10. It is no doubt true that in terms of Section 3 of the Limitation Act, 1963 as also the provisions of the said Act, a suit must be filed within the prescribed period of limitation. The Civil Court has no jurisdiction to extend the same.

11. However, the provisions of the Limitation Act should be construed in a broad manner. Different provisions of the Limitation Act may require different constructions, as for example, the Court exercises its power in a given case liberally in condoning the delay in filing an appeal under Section 5 of the Limitation Act. However, even for the purpose of delay and the grounds for condonation of delay may have to be taken into consideration for examining its correctness by the court in each case. We, however, may not be understood to lay down a law that the same principle would apply in case of construction of Section 3 of the Limitation Act.

12. The provisions of Article 2(b) of the 1920 Act provides for two starting points of limitation; (1) the date on which the right to sue accures and (2) the date on which declaratory decree is obtained, whichever is latter. There is, therefore, no fixed period of limitation. The period of limitation, thus, would be reckoned from the date on which the right to sue has accrued or declaratory decree is obtained.

13. It is not in dispute that appellants are in possession of the suit property. Respondents herein filed a Second Appeal. During pendency of the Second Appeal, both the parties to the deed of sale dated 24.7.1953, died. It has not been disputed before us that an application for substitution was required to be filed so as to save the appeal from having become abated within the prescribed period of limitation. The heirs and legal representatives of Sher Singh were not necessary to be brought on record as they were already on record. However, legal heirs and/or representatives of Bansi, namely, the respondents herein were required to be brought on record by them.

14. Our attention has been drawn to an amendment of the Punjab and Haryana High Court in Order XXII Rule 3 of the Civil Procedure Code,which reads as under:

> "2A. Every advocate appearing in the case who becomes aware of the death of a party to the litigation (where he appeared for him or not) must give intimation about the death of a party to party to the Court and to the person who is dominus litis.
>
> 2B. The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is domimus litis."

15. Indisputably, requirements of the law to bring the heirs and legal representatives of the deceased on records, were not complied with.

16. The High Court, as noticed hereinbefore, proceeded on the basis that the period of limitation would start running from the date on which declaratory decree was passed. According to the High Court, as declaratory decree was passed on 11.4.1969 and in any event, as Sher Singh had died on 25.2.1973, the suit was required to be filed by the appellants within three years from the said date and in view of the fact that the suit was filed on 2.11.1977, the same was barred by limitation.

17. The question which arises for our consideration is as to what would be the date on which declaratory decree can be said to have been obtained by the appellants.

18. Mr. Gupta, learned counsel appearing on behalf of the respondents himself has relied upon a decision in *Abdulla Asghar Alia and Ors.* v. *Ganesh Das Vig,* AIR (1933) PC 68, wherein the judicial Committee, in no uncertain terms stated the law as under:

> "In the case now before their Lordships it is manifest that there was an order of the appellate Court, and that it did deal judicially with the matters before it. The Judicial Commissioner considered the judgment debtor's contention that his appeal had not abated and held that it had. He considered the prayer for revival of the arbitration and refused it. He rejected the application to set

A aside the abatement. *Whether the order made was right or wrong is immaterial, there was no appeal against it and it was in the circumstances clearly final. Their Lordships think that when an order is judicially made by an appellate Court, which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by Article 182(2) of the Act of 1908...*"

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[Emphasis supplied]

19. In *Ajudhia Prasad* v. *The U.P. Government,* AIR (1947) Allahabad 390, a Division Bench of the Allahabad High Court opined as follows:

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"...I take up first the question of limitation. The argument on behalf of the appellant is that there was an automatic abatement of the proceedings on the death of the defendant on 4.6.1939 and, as the application for execution was made more than three years from that date, it is time barred. No doubt as the law is, there was an automatic abatement on 4.6.1939, but where there has been an order of the Court declaring an appeal to have abated, the period of limitation under Article 182, Limitation Act should be reckoned from that date..."

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E 20. The question came up for consideration in a different context before a three-Judge Bench of this Court in *Shyam Sundar Sarma* V. *Pannalal Jaiswal and Ors.,* [2005] 1 SCC 436 wherein P.K. Balasubramanyan, J. speaking for the Bench opined that although an appeal was found to be barred by limitation for the purpose of reckoning the period of limitation, the F date on which the appeal was dismissed by the Court, the same being barred, shall be the relevant date stating :

" 9. The specific question involved came to be considered by this Court in *Mela Ram and Sons* v. *CIT.* This Court held that an appeal presented out of time is an appeal and an order dismissing G it as time-barred is one passed in an appeal. This Court referred to and followed the view taken by the Privy Council and by this Court in the two respective decisions above-referred to. This Court quoted with approval the observations of Chagla, C.J. In *K.K. Porbunderwalla* v. *CIT,* (ITR p.66) to the following effect: (SCR H P.176)

"Although the Appellate Assistant Commissioner did not hear the appeal on merits and held that the appeal was barred by limitation his order was under Section 31 and the effect of that order was to confirm the assessment which had been made by the Income Tax Officer." A

9.1 In *Sheodan Singh* v. *Daryao Kunwar* rendered by four learned Judges of this Court, one of the questions that arose was whether the dismissal of an appeal from a decree on the ground that the appeal was barred by limitation was a decision in the appeal. This Court held:(SCR pp.308 H-309 B) B

" We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision of the trial Court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal." C D

21. Yet again in *Union of India and Others* v. *West Coast Paper Mills Ltd. And Anr.,* [2004] 2 SCC 747, this Court had occasion to consider the provisions of limitation contained in Section 46-A of the Railways Act, 1890. Therein this Court was considering the applicability of Article 113 vis-à-vis Article 58 of the Limitation Act, 1963. In that case the plaintiff had filed a suit for refund. A claim was also preferred by the defendant before the Railway Tribunal. The Tribunal was only entitled to make a declaration that freight charges are unreasonable or excessive. It did not have the jurisdiction to execute its own order. Although the power of the tribunal in terms of Section 46-A of the Railways Act was final, this Court held that the jurisdiction of the Court under Article 136 thereby was not taken away. In relation to the subsequent suit filed by the plaintiff for recovery of the amount after disposal of the appeal preferred by the plaintiff therefrom, it was held that the period of limitation would start running from the date on which this Court had delivered its judgment *inter alia* stating: E F G

" 21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is H

A to be counted from the date when "the right to sue first accrues", in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues." The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of the Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose."

C 22. The Court while laying down the aforementioned principle applied the doctrine of merger as laid down in the decision of this Court in *Kunhayammed and Ors.* v. *State of Kerala & Anr.*, [2000] 6 SCC 359.

23. In *Mithailal Dalsangar Singh and Ors.* v. *Annabai Devram Kini* D *and Ors.*, AIR (2003) SC 4244 this court observed the effect of abatement in the following terms:

"In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement E and the dismissal consequent upon an abatement, have to be considered liberally, A simple payer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement."

F 24. We need to read the liberal trend on *setting aside the abatement* and the issue of '*finality of decision on abatement*' together. It is to be noted that considerable leeway has been accorded to proceedings to set aside abatement. Thus it follows that only because abatement leads to serious consequences, the emphasis on ample opportunity to set aside G abatement has been laid down.

25. In circumstances where no such proceeding is initiated under Order XII R. 9 (2) the abatement culminates into finally fixing the outcome of the suit. In that event the decision gains final shape at the precise juncture of H successful abatement and that point serves as the closure of suit. Therefore

the order of abatement gives a new *starting point* for the period of limitation. [See *Abdullah Ashgar Alia* (supra)]

26. The provisions of statute of limitation cannot be construed in a pedantic manner. This is now a well known principle of law. Had the appeal been dismissed on merit, indisputably the period of limitation would have started from the date of dismissal of the Second Appeal. The respondents themselves preferred an appeal. The appeal was a continuation of a suit. Appellants herein could not, thus, have been held to be aware of the fact that during pendency thereon Bansi would die or the appeal shall abate. Let us consider a hypothetical situation. An appeal abates after three years of the judgment and decree passed by the first appellate court and in that situation the appellant would have no chance to reap the benefit thereof, if the submission of the learned counsel appearing on behalf of the respondent is accepted. The law, in our opinion, cannot be construed in a manner which would defeat the ends of justice.

27. In fine, when an appeal/suit abates, the same may not amount to adjudication of a decree on merit but indisputably it would attain finality. *Decision on merits* is not the only test to determine the finality of decision. Finality gained due to abatement is an illustration of the aforementioned variety. The declaratory decree, in that view of the matter passed in favour of the respondents had attained finality only when the order dated 14.10.1977 was passed.

28. Our attention was drawn by Mr. Gupta to a decision in *Harendra Lal Roy Chowdhuri* v. *Haridasi Debi and Ors.*, AIR (1914) PC 67. Therein a mortgage suit was filed. The question which arose for consideration therein was as to whether an order directing to amend the description of the parcel which formed part of the decree came within the scope of the suit which was in no respect a suit for rectification. It was in the aforementioned fact situation held :

> "...The learned Judge accepted this contention and accordingly held that property situate in Calcutta was included in the mortgage and that he had jurisdiction. No such decision, if erroneous, could extend the jurisdiction of a Court of limited territorial jurisdiction, and therefore the validity of this decree is open to challenge by the present defendants, who were no parties to proceedings. Similarly, the direction of the said Judge that the description of the parcel in

A question should be amended (even if it was effective between the parties to that suit) cannot affect the present defendants, whose title is of earlier date, or render valid the registration if they can maintain their contentions relating thereto. It is difficult, indeed, to see how the direction to amend the description of the parcel which formed part of the decree came within the scope of the suit, which
B was in no respect a suit for rectification..."

29. We are not concerned herein with the effect of lack of territorial jurisdiction of the Court. The said decision therefore, in our opinion, has no application to the facts of the present case.

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30.Reliance has also been placed by Mr. Gupta on *Mamuda Khateen and Ors.* v. *Beniyan Bibi and Ors.,* AIR (1976) Calcutta 415, wherein it was held that an order rejecting the memorandum of appeal following the rejection of an application under Section 5 of the Limitation Act for condonation of the delay in filing the appeal is not a decree but incidental
D to an order against which an application in revision under Section 115 of the Code may lie but no appeal under Order 43 Rule 1 of the Code will be maintainable. If the application under Section 5 is rejected, the order rejecting the said application cannot be a decree and, thus, the order rejecting the memorandum of appeal would merely be an incidental order.

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31. We have noticed hereinbefore that the said view has not been accepted by this Court in *Sohan Lal* v. *Raghunath Prasad and Ors.,* AIR (1981) Allahabad 235 whereupon Mr. Gupta, learned counsel placed strong reliance. The question which arose for consideration therein was as to whether an order of abatement would amount to a decree for the purpose
F of maintainability of an appeal thereagainst although there existed no provision therefor.

32. For the reasons aforementioned, we are of the opinion that the High Court was not correct in holding that the suit of the appellants was barred by limitation. The appeal is allowed. There will, however, be no order as to
G costs.

D.G. Appeal allowed.