

A

GHEWARCHAND & ORS.

v.

M/S MAHENDRA SINGH & ORS.

B

(Civil Appeal No. 5870 of 2015)

SEPTEMBER 20, 2018

[ABHAY MANOHAR SAPRE AND S. ABDUL NAZEER, JJ.]

C *Limitation Act, 1963 – Art.65 – Applicability of – Appellants-plaintiffs filed a civil suit against the respondents-defendants in relation to a property – Trial Court held all the issues including the issue of limitation in favour of the plaintiffs and decreed the suit – However, the High Court reversed the finding on the issue of the limitation and dismissed the suit of plaintiff on the ground of limitation, as suit was for declaration and consequential injunction and, therefore, it was governed by the period of 3 years limitation – On appeal, held: High Court was factually not correct in observing that the suit was filed for declaration and injunction only and ‘not for possession’ – The plaint showed that the plaintiffs had also prayed for decree of possession of the suit property from the defendants – Furthermore, the suit property was also the subject matter of the proceedings u/s.145 Cr.P.C., where both parties were claiming their right, title and interest including possession over the suit property against each other, and suit property was attached by the City Magistrate by order dated 23.12.1966 – Art. 65 of the Act provides limitation of 12 years for filing the suit which is to be counted from the date when the possession of the defendant becomes adverse to the plaintiff – Art.65 was applicable and the Plaintiffs rightly filed the civil suit on 19.12.1978 within 12 years from the date of attachment order dated 23.12.1966 – Thus, order of the trial Court holding that the suit was filed within limitation is restored – Code of Criminal Procedure, 1973 – s.145.*

G

Allowing the appeal, the Court

HELD: 1. The High Court was of the view that the plaintiffs’(appellants) suit against the defendants (respondents) was essentially for declaration and consequential injunction and,

H

therefore, it was governed by the period of three years limitation, which was to be counted from the date of accrual of first cause of action. It was held that since the suit was not filed within three years, it was barred. [Para 13] [742-B-C] A

2. Without going into any factual controversy and the lengthy pleadings, the High Court was factually not correct in observing that the suit was filed for declaration and injunction only and “not for possession”. [Para 15] [742-F-G] B

3. Mere perusal of the relief in clause 26 (3) of the plaint would show that the plaintiffs had also prayed for decree of possession of the suit property from the defendants. Furthermore, it is not in dispute as the pleadings would go to show that the suit property was the subject matter of the proceedings under Section 145 Cr.P.C. between the parties before the City Magistrate wherein both the parties were claiming their right, title and interest including asserting their possession over the suit property against each other. It is also not in dispute that the City Magistrate vide his order dated 23.12.1966 attached the suit property. [Paras 16 and 17] [742-G-H; 743-A-B] C D

4. The plaintiffs, therefore, rightly filed the civil suit on 19.12.1978 within 12 years from the date of attachment order dated 23.12.1966. The assertion of the right, title and interest over the suit property by the defendants having been noticed by the plaintiffs for the first time in proceedings of Section 145 of the Cr.P.C. before the City Magistrate, they were justified in filing a suit for declaration and possession. It was, therefore, rightly held to be within limitation by the Trial Court by applying Article 65 of the Limitation Act. [Para 20] [743-F-G] E F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5870 of 2015

From the Judgment and Order dated 04.12.2006 of the High Court for Rajasthan at Jodhpur in S. B. First Appeal No. 52 of 1997 G

S. K. Jain, Sr. Adv., Dileep Tandon, Puneet Jain, Harsh Jain, Ms. Priyal Jain, Ms. Vineeta Meghrajani, Pramod Sharma, Ms. Pratibha Jain, Advs. for the appellants.

H

A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed against the final judgment and order dated 04.12.2006 passed by the High Court of Rajasthan at Jodhpur in S.B. Civil First Appeal No.52 of 1997 whereby the High Court allowed the appeal filed by the respondents(defendants)

B and set aside the judgment and decree dated 30.10.1996 passed by the Additional District Judge No.3 Jodhpur in Civil Suit No.135 of 1995(146/1978) and dismissed the suit filed by the appellants(plaintiffs) as barred by time.

C 2. In order to appreciate the question involved in the appeal, it is necessary to set out few facts infra.

3. The appellants are the plaintiffs whereas the respondents are the defendants in a civil suit out of which this appeal arises.

D 4. The short question involved in this appeal is whether the High Court was justified in allowing the defendants' first appeal and thereby dismissing the appellants' (plaintiffs) suit as barred by time.

5. The appellants (plaintiffs) filed a civil suit against the respondents (defendants) in relation to the suit property, as detailed in Para 1 of the plaint, for claiming the reliefs mentioned in para 26(3) of the plaint which reads as under:

E **“26. Plaintiffs humbly pray that:**

F **1. Decree for declaration of title be passed in favour of plaintiffs and against the defendants that property as described in Para No.1 of this suit belongs to Sh. Oswal Singh Sabha, Jodhpur and defendants Sh. Kishan Singh does not have any kind of ownership rights over it.**

G **2. Decree for permanent injunction be passed in favour of plaintiffs and against the defendants that defendants be restrained from making any kind of claim or from carrying out any kind of proceeding and interfering in the possession of disputed property forever.**

3. Possession of above property be provided to the plaintiff from the receiver.

H **4. Cost of this suit be also provided to the plaintiffs from the defendants.**

5. Other relief, which this Hon'ble Court may deem fit, be also provided to the plaintiffs.” A

(Emphasis supplied)

6. The respondents (defendants) filed the written statement and joined issues on facts and law by denying the material allegations made in the plaint. The respondents, *inter alia*, also raised an objection that the suit is barred by limitation. B

7. The Trial Court, by judgment/decree answered all the issues on facts and law including the issue of limitation in appellants' favour and against the respondents and accordingly decreed the suit. It was held that the appellants are the owners of the suit property; they are entitled to claim possession of the suit property from the respondents; and lastly, the suit is within limitation. C

8. The respondents (defendants) felt aggrieved and filed first appeal in the High Court of Rajasthan at Jodhpur. By impugned judgment, the Single Judge allowed the appeal and set aside the judgment and decree of the Trial Court and, in consequence, dismissed the suit only on the ground that the suit is barred by limitation. In other words, the High Court upheld all the factual findings of the Trial Court in appellants' (plaintiffs') favour but reversed the finding on the issue of limitation and held that since the suit is hit by the period of limitation prescribed under the Indian Limitation Act, 1963, it is liable to be dismissed on the ground of limitation. In this view of the matter, the defendants' appeal was allowed and the suit was dismissed as being barred by limitation having been filed beyond the period prescribed under the Limitation Act giving rise to filing of the present appeal by way of special leave in this Court by the plaintiffs. D E F

9. Mr. S.K. Jain, learned senior counsel appeared for the appellants (plaintiffs). None appeared for the respondents though served.

10. Having heard the learned counsel for the appellants (plaintiffs) and on perusal of the record of the case, we are inclined to allow the appeal and set aside the impugned judgment only to the extent it decides that the suit was barred by limitation and, in consequence, restore the judgment of the Trial Court holding that the suit was filed within limitation. G

11. In our considered opinion, the Trial Court was right in holding that the plaintiffs' (appellants herein) suit was filed within limitation H

A whereas the High Court was not right in reversing this finding. This we say for the following reasons.

12. On perusal of the judgment of the Trial Court, we find that the Trial Court applied Article 65 of the Limitation Act for holding the suit to be within limitation because it was filed by the plaintiffs within 12 years from the date of accrual of cause of action prescribed in Article 65.

13. The High Court, however, was of the view that the plaintiffs' (appellants) suit against the defendants (respondents) was essentially for declaration and consequential injunction and, therefore, it was governed by the period of three years limitation, which was to be counted from the date of accrual of first cause of action. It was held that since the suit was not filed within three years, it was barred.

14. It is apposite to reproduce the finding of the High Court on this issue:

D “.....However, nothing was pleaded by the plaintiffs in relation to the said order dated 20.09.1983 and the suit was prosecuted in its original form only. With conscious omission on the part of the plaintiffs to sue for possession, the submissions strenuously made by learned counsel Mr. Mehta with reference to Article 65 of the Limitation are of no avail. The suit was for declaration and consequential injunction only and having admittedly been filed much beyond the period of three years from the date of first accrual of cause of action, remains hopelessly barred by the limitation and, therefore, deserves to be dismissed.”

(Emphasis supplied)

F 15. Without going into any factual controversy and the lengthy pleadings, which we consider not necessary, the High Court, in our view, was factually not correct in observing that the suit was filed for declaration and injunction only and “not for possession”. (See underlined portion above).

G 16. In our view, mere perusal of the relief in clause 26 (3) of the plaint quoted in para 5 above would show that the plaintiffs had also prayed for decree of possession of the suit property from the defendants.

H 17. It is not in dispute as the pleadings would go to show that the suit property was the subject matter of the proceedings under Section

145 of the Criminal Procedure Code, 1973 (hereinafter referred to as “the Cr.P.C.”) between the parties before the City Magistrate wherein both the parties were claiming their right, title and interest including asserting their possession over the suit property against each other. It is also not in dispute that the City Magistrate vide his order dated 23.12.1966 attached the suit property.

18. The plaintiffs, therefore, filed a civil suit on 19.12.1978 for claiming a declaration of their title on the suit property, injunction and possession against the defendants. Since the suit was for declaration, permanent injunction and possession, Article 65 of the Limitation Act was applicable, which provides a limitation of 12 years for filing the suit which is to be counted from the date when the possession of the defendant becomes adverse to the plaintiffs.

19. As per the allegations in the plaint, the defendants’ possession, according to the plaintiffs, became adverse when the defendants in Section 145 of the Cr.P.C. proceedings asserted their right, title and interest over the suit property to the knowledge of the plaintiffs for the first time and which eventually culminated in passing of an attachment order by the City Magistrate on 23.12.1966. This action on the part of the defendants, according to the plaintiffs, cast cloud on the plaintiffs’ right, title and interest over the suit property and thus furnished a cause of action for claiming declaration of their ownership over the suit property and other consequential reliefs against the defendants in relation to the suit property. (see para 23 of the plaint)

20. In our opinion, the plaintiffs, therefore, rightly filed the civil suit on 19.12.1978 within 12 years from the date of attachment order dated 23.12.1966. The assertion of the right, title and interest over the suit property by the defendants having been noticed by the plaintiffs for the first time in proceedings of Section 145 of the Cr.P.C. before the City Magistrate, they were justified in filing a suit for declaration and possession. It was, therefore, rightly held to be within limitation by the Trial Court by applying Article 65 of the Limitation Act.

21. In order to decide the question of limitation as to whether the suit is filed within time or not, the Court is mainly required to see the plaint allegations and how the plaintiff has pleaded the accrual of cause of action for filing the suit. In this case, we find that the plaintiffs satisfied this requirement to bring their suit within limitation.

A
B
C
D
E
F
G
H

A 22. As mentioned above, the defendants (respondents) lost the
suit on merits on all fronts as they could neither prove their title and nor
their lawful possession over the suit property. They, however, succeeded
in the High Court only on the point of limitation which had resulted in
non-suiting the plaintiffs. Since the defendants did not file any cross
B objection in the appeal against the adverse findings recorded by the two
Courts below against them, it is not necessary for this Court to examine
the legality and correctness of those findings in this appeal.

C 23. In the light of the foregoing discussion, we cannot concur with
the view taken by the High Court on the question of limitation. It is
legally unsustainable and hence deserves to be set aside.

D 24. The appeal thus succeeds and is accordingly allowed.
Impugned judgment insofar as it holds that the appellants' (plaintiffs')
suit is dismissed as being barred by limitation is hereby set aside. As a
result, the judgment and decree of the Trial Court is restored in favour of
the appellants(plaintiffs).