

Puran Singh Vs Santa Singh

S.A.O. No. 3 of 1951

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 17, 1952

Acts Referred:

Bhupindra Oudh Sunai Act, 1969 " Section 29, 3, 4, 9#Limitation Act, 1963 " Section 29

Citation: (1952) 04 P&H CK 0013

Hon'ble Judges: Teja Singh, C.J

Bench: Single Bench

Advocate: P.L. Handa, for the Appellant; Vdyadhar and Jai Kishan, for the Respondent

Judgement

Teja Singh, C.J.

This appeal arises out of a suit for the recovery of a sum of money alleged to be due on the basis of bond. The Defendant

resisted the suit on two grounds, (1) that the amount had been paid off, and (2) that the suit was barred by time. The trial Judge found for the

Defendant on both the points and dismissed the suit. On appeal, the District Judge set aside the decision of the trial Court on the question of

limitation and remanded the case for re-decision on the question of payment, because he was of the view that opportunity had not been given to

the Plaintiff to rebut the evidence that the Defendant had examined to prove payment. The Defendant is the Appellant before me.

2. The parties belong to the erstwhile Kapurthala State and according to the law prevalent in that State limitation period for a suit for recovery of

money on the basis of a bond was six years. When the Kapurthala State acceded to the Union of Patiala and East Punjab States, the Kapurthala

limitation Act was

superseded and in its place came into force that Bhupindra Oudh Sunai Act, according to which limitation for a suit on a bond was three years.

3. I shall first deal with the question of limitation. The bond on which the suit was based is dated 21-8-2000. The suit was instituted on 7-5-2006.

Both sides are agreed that the place where the bond was executed was within the territories of the erstwhile Kapurthala State, and according to

the law prevalent in that State limitation for a suit on a bond was six years. The Appellant's counsel, however, contended that after the accessidn

of the Kapurthala State to the Patiala and East Punjab States Union the Kapurthala Law of Limitation was superseded and its place was taken by

the Bhupindra Oudh Sunai Act of 1969 Bk, according to which limitation for suits of this kind was 3 years and this suit should have been instituted

within one year of grace allowed by Sub-section (2) of Section 3 of the Patiala and East Punjab States Union Ad-ministration (Amendment)

Ordinance, XIII 2005. The sub-section in question reads as follows :

Notwithstanding anything contained in this Ordinance, any suit for which the period of limitation prescribed by the Bhupindra Oudh Sunai Act,

1969, is shorter than the period of limitation prescribed by any law in force in any covenanting State immediately before the appointed day, may be

instituted -

(a) within the period of limitation prescribed by the Bhupindra Oudh Sunai Act, 1969, or

(b) within the period of one year after the appointed day, whichever expires later;

Provided that the period of limitation prescribed for such suit by any law in force in any covenanting State has not expired on the appointed day.

4. It is laid down in Section 3 of the Ordinance that the ""appointed day"" means the 5th day of Bhadon 2005, and relying upon this, the Appellant's

counsel argued that the suit should have been instituted by 5th Bhadon 2006. So far as the applicability of the Ordinance is concerned there is no

difference between the parties" counsel and the counsel for the Plaintiff respondent admits that the last day of limitation for the suit was 5th Bhadon

2006, but he maintains that since 5th and 6th Bhadon 2000 were public holidays, the suit could properly be instituted on the 7th Bhadon 2006 by

virtue of Section 4, Bhupindra Oudh Sunai Act, taken together with Section 29.

Section 4 is to the effect that where the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is

closed, the suit, appeal or application may be instituted, preferred or made on the day that the Court re-opens, and Section 29 lays down that

where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by

the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore 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 the provisions contained in Section 4,

Section 9 etc., shall apply only in so far as, and to the extent to which they are not expressly excluded by such special or local law.

5. The Appellant's counsel cited-"Dial Singh v. Budha Singh" 61 IC 327 but at that time Section 29, Indian Limitation Act, was worded

differently. The Indian Limitation (Amendment) Act No. X of 1922 substituted the present Section 29 of the Indian Limitation Act in place of the

original section and this amendment was adopted by the Bhupindra Oudh Sunai (Amendment) Act No. XII of 2003 Bk. The effect of Section 29

as amended in 1922 was considered in - "Jiwan Singh v. Managing Committee, Gurdwara Tahli Sahib" AIR 1930 Lah. 800 in which it was held

that the section excludes the applicability of Section 4 only when a special or local law expressly excludes it. Since it is admitted that the Ordinance

of 2005 did not expressly exclude the applicability of Section 4, I hold that the Plaintiff was entitled to its benefit and the suit was within time.

6. As regards the finding of the District Judge that the Plaintiff was not given opportunity to rebut the evidence produced by the Defendant to prove

payment, it is borne out by the record and the Appellant's counsel has nothing to urge anything serious against it.

7. The result is that the appeal fails and is dismissed with costs. Parties counsel have been directed to cause their respective clients to appear

before the trial Court on 5th May 1952. The record of the case to be transmitted to that Court forthwith.