

Thakur Pd. Vs Board of Revenue and Others**Civil Miscellaneous Writ No. 3995 of 1970**

Court: Allahabad High Court**Date of Decision:** Oct. 10, 1972**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) â€” Section 80#Limitation Act, 1963 â€” Section 15(2)#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€” Section 209

Citation: (1972) 42 AWR 831**Hon'ble Judges:** G.C. Mathur, J**Bench:** Single Bench**Advocate:** V.K.S. Chaudhary, for the Appellant; G.N. Verma and S.C., for the Respondent**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

G.C. Mathur, J.

The Petitioner filed a suit u/s 209 of the UP ZA and LR Act against Respondent No. 2, for his eviction from plot No.

723/1. This suit was resisted by the Respondent No. 2, inter alia, on the ground that it was barred by limitation. The trial court held that the suit

was not barred by limitation and decreed it. The decree of the trial court was upheld by the Additional Commissioner in appeal. Thereupon the

Respondent No. 2 filed a second appeal before the Board of Revenue. The Board of Revenue has held that the suit was time barred and has

dismissed the same. The judgment of the Board of Revenue is challenged in this writ petition.

2. There is no dispute regarding the facts relating to the plea of limitation. The limitation for a suit u/s 209 is six years. In the present case it will be

computed from the 1st July, following the date of occupation by the trespasser. Admittedly, these six years were completed on June 30, 1966 and

the suit should have been filed on July 1, 1966. The suit, in fact, was filed on August 6, 1966, about a month and six days after the expiry of the

period of six years. The Petitioner claimed the exclusion of the period of two months required for giving a notice u/s 80, Code of Criminal

Procedure to the State Government. This claim was made u/s 15(2) of the Limitation Act, 1963. The trial court held that the Petitioner was entitled

to exclude the period of the notice u/s 80, CPC and held the suit to be within time. The Additional Commissioner also held the suit to be within

time. The Board of Revenue, following its earlier decision in Rajjab v. Shamsher Khan 1969 RD 368, held that the period of notice u/s 80, Code

of Criminal Procedure could not be excluded from the period of limitation and accordingly, held that the suit was barred by time. Learned Counsel

for the Petitioner has contended that the view taken by the Board of Revenue is manifestly erroneous in law.

3. Sub-section (2) of Section 209 provides that every Suit u/s 209(1) relating to land referred to in Clause (a) of Sub-section (1), the State

Government shall be impleaded as a necessary party. In view of this provision it cannot be disputed that the State Government was a necessary

party to the suit. The Petitioner did, in fact, implead the State Government as a Defendant to the suit. Before instituting the suit the Petitioner gave a

notice u/s 80, Code of Criminal Procedure to the State Government. The contention of the learned Counsel for the Petitioner is that since the State

Government was a necessary party to the suit, it was incumbent upon the Petitioner to implead the State Government and to give a notice u/s 80

Code of Civil Procedure, to the State Government. That being so, he has contended, that the period of notice must be excluded in computing the

period of limitation for filing the suit. There is considerable force in this contention. The plain language of Section 80, Code of Criminal Procedure

supports this contention. Leaving out the words not necessary for the purposes of this case Section 80, Code of Criminal Procedure reads thus:

No suit shall be instituted against the Government...until the expiration of two months next after notice in writing has been delivered to:

(a).... (b)....

(c) in the case of a suit against any other State Government a Secretary to that Government or the Collector of that district:

stating the cause of Action, the name, description and place of residence of the Plaintiff and the relief which he claims; and the plaint shall contain a

statement that such notice has been so delivered or left.

The Section is in mandatory terms and forbids the filing of a suit against the State Government until the expiry of two months from the giving of a

notice in writing to it. The only question which arises for consideration is whether the present suit is a suit against the State Government. In my

opinion, since Sub-section (2) of Section 209 of the UP ZA and LR Act makes the State Government a necessary party to the suit, the suit must

be deemed to be a suit against the State Government also, even if it is essentially for the eviction of some other person. There can be no doubt that

in some cases, where the Government considers it necessary or proper, it may file a written statement and contest the suit. If in that event a decree

is passed in favour of the Plaintiff, the State Government may even prefer an appeal. All this shows that the State Government is not merely a

formal party to the suit, but a necessary party having some interest in the subject matter of the suit and in the relief claimed by the Plaintiff. That

being so, the giving of a notice u/s 80 Code of Criminal Procedure was necessary before the Plaintiff could institute the suit against the State

Government which was a necessary party therein. To such a situation the provision of Sub-section (2) of Section 15 of the Limitation Act are

clearly attracted.

4. The earlier decision of the Board of Revenue in *Rajjab v. Shamsheer Khan* is manifestly erroneous in law. It was held in that case that Section

15(2) of the Indian Limitation Act was not applicable to suits under the ZA and LR Act. It was, further, held that Section 80, Code of Civil

Procedure, applies to cases other than those under the UP ZA and LR Act. The view taken by the Board of Revenue in this case is directly

contrary to the decision of this Court in *Bans Bahore v. State of U.P.* 1969 AWR 219. The decision of this Court was cited before the Board of

Revenue in that case and it has by some curious process of reasoning given a decision directly contrary to the decision of this Court. The Board of

Revenue in the present case has committed a manifest error of law in following its earlier decision.

5. In my opinion, since in a suit u/s 209 of the UP ZA and LR Act it is incumbent upon the Plaintiff to implead the State Government as a

necessary party, it is also necessary for him to give a notice u/s 80, Code of Criminal Procedure to the State Government before he institutes the

suit and for that reason he is entitled to the exclusion of the period of notice in computing the limitation for filing the suit. If the period of notice u/s

80, Code of Criminal Procedure in the present case is excluded, there can be no doubt that the suit filed by the Petitioner was well within time.

6. The writ petition is, accordingly, allowed. The judgment of the Board of Revenue dated May 7, 1970, is quashed. The Board of Revenue is

directed to restore the Second Appeal to its original number and after giving the parties a fresh opportunity of being heard, to decide the same in

accordance with law. There will be no order as to costs.