
Bhanu Vikrama Panicker Vs Janaki Amnta**S.A. No. 598 of 1964**

Court: High Court Of Kerala**Date of Decision:** Nov. 8, 1967**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Order 7 Rule 6, 149#Constitution of India, 1950 " Article 142#Limitation Act, 1963 " Section 14

Citation: (1968) KLJ 322**Hon'ble Judges:** M. Madhavan Nair, J**Bench:** Single Bench**Advocate:** S. Easwara Iyer, L.G. Potti, C.S. Rajan, for the Appellant; K.P. Ramunni Menon, K.Ramkumar, P. Ramrajan, for the Respondent**Final Decision:** Dismissed

Judgement

M. Madhavan Nair, J.

This appeal is by defendants 2 to 7 in a suit for recovery of landed property on strength of title. The suit property

belonged to one Mutharakkal tarwad, and has been allotted in partition in 1918 to Kunbikrishna Panicker, subject to certain liabilities. As he did

not discharge those liabilities, the creditor sued in O.S.N0.306 of 1924 on the file of the Munsiff, Chowghat, and got a decree charged on the

property. The plaintiff got an assignment of the decree, executed it and purchased the suit property in court-sale on July 1, 1942, Ex. A5 being the

relative sale certificate. He obtained delivery of the property on September 15, 1942. Defendants 1 and 2 obtained a conveyance of the property

from Kunhikrishna Panicker in 1922 as per Ex. B1. Defendants 3 to 7 are members of their tavazhi. The present suit by the plaintiff is to recover

the property from defendants 1 to 7 on the ground that in spite of the delivery proceedings under Ex. A5, the defendants continued on the

property. The defendants contended the suit to be barred by limitation, but it has been repelled by the courts below. In this appeal, the contention

is repeated urging that the institution of this suit beyond 12 years of the date of delivery in the former suit is barred under Article 142 of the

Limitation Act, 1908. The question then is as to the date of presentation of this suit. This suit was originally instituted in the Court of the Munsiff,

Chowghat, on September 15, 1954, that is exactly the eve of expiry of 12 years from the date of delivery in the prior suit. The value of the

property for purposes of court-fee was shown in the plaint at Rs. 1630 odd but only a court-fee of one rupee was paid on it that day. The court

ordered on September 16,

Court-fee paid not sufficient. The plaint copies not produced. Returned. Time one week.

Obviously by the above order, the court allowed a week for payment of the deficit court-fee payable on the plaint. On September 18, 1954, the

plaint was represented with the entire court-fee paid thereon. The defendants then contended the suit to be under-valued, where upon the plaintiff

applied for a return of the plaint for presentation to the Subordinate Judge's Court, It was returned on February 25, 1955, and was presented on

the same day in the Subordinate Judge's Court, Ottapalam. The Controversy is whether the institution of the suit was on September 18, 1954, or

on February 25, 1955, which to the date is beyond 12 years of the plaintiff's dispossession defendants, as it is admitted that the defendants

continued in possession of the property in spite of the delivery had on September 15, 1942.

2. When a plaint is insufficiently stamped the court may, u/s 149 C.P.C., allow the plaintiff to pay the deficit court-fee and when it is paid in

accordance with court's order the plaint has to be deemed properly stamped in the first instance. The court having allowed a week's time from

September 16, and the deficit court -fee having been paid on September 18, the case comes strictly under Sec. 149 C.P.C. For all purposes the

entire court-fee has therefore to be deemed to have been paid on September 15 itself. The contention that the valid presentation of the plaint was

only on September 18, 1954, has therefore to be overruled u/s 149 CPC.

3. It is next contended that the plaintiff having got the plaint returned from the Munsiff as if the suit was under-valued, and represented it in the

Subordinate Judge's Court, the presentation in the court of incompetent jurisdiction has to be ignored and the date of institution of the suit has to

be taken as February 25, 1955, when it was presented in the proper court. Counsel for the plaintiff claims exclusion of time from September 15,

1954 to February 25, 1955, u/s 14 of the Limitation Act. Though a specific ground of exemption u/s 14, Limitation Act, has not been taken in the

plaint, counsel submits that Rule 6 of Order VII C.P.C. is no bar in this case as the facts necessary for the application of section 14 can be seen

from the endorsements on the plaint itself. Order VII Rule 6, C.P.C. requires the plaint to show the grounds upon which exemption from the law of

limitation is claimed. The grounds of exemption to be shown in the plaint must necessarily have been existing on its date or in other words must

relate to events proceeding the suit. Events subsequent to the original presentation of the plaint (though it happened in a wrong court) cannot

normally be expected to be made in the plaint. Such events can be mentioned in a plaint only by an amendment thereof; but in most of such cases

as in the present case-the facts or events may be seen in the endorsements on the plaint. That such endorsements can be relied on for purposes of

exclusion of time u/s 14 of the Limitation Act read with Order VII Rule 6 C.P.C., has been held in Sukhbir Singh v. Piare Lai (AIR 1923 Lahore

591), Bincdial v. Saty- endrasingh AIR 1956 Mad Bha 97, Firm Lalchand Mathmel v. Firm Balaram Rameshwar AIR 1957 M. P 95, and also

by this court in Raman Kunjukrishnan v. Raman Viswanathan 1964 KLT 449. It is then argued that the plaintiff had, in the first instance,

deliberately under-valued the suit and that therefore he is not entitled to the exclusion of time u/s 14 of the Limitation Act. Counsel for the plaintiff

states that he has valued the suit originally at 10 times the revenue assessed and settled on the land; but the court ordered him to value the suit at

the market value of the disputed property and compelled him to pay court-fee thereon. u/s 7 (v) (b) of the court-fees Act, 1870, as amended in

Madras, court-fee payable ""in suits for possession of land (is) according to the value of the subject matter; and such value shall be deemed to be,

where the subject-matter is land, and where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government,

or forms part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently, ten times the revenue so payable."" Ex

A-10 is the pattah for the suit property, Re-Survey No, 230/- whose original area was recorded as 16 acres 25 cents-which is the area claimed in

the plaint, though the extent recorded at the resettlement is far above it. The suit property must therefore be held to have been separately recorded

in the land records and been assessed to annual revenue. The revenue assessed under Ex. A-10 for 45.76 acres being Rs. 326.06, it cannot be

said that the value given in the original plaint for the 16.25 acres claimed in the plaint at Rs. 1630 odd was a deliberate undervaluation. The

plaintiff's institution of the suit with valuation mentioned above seem to have been bona fide, and his conduct in not challenging the order of the

court, which appears prima facie to be erroneous, would not militate against his bona fides in the matter. I would therefore hold the plaintiff entitled

to exclusion of time u/s 14 of the Limitation Act from September 15, 1954 to February 25, 1955. If that be allowed, the suit is admittedly in time.

The second appeal has no force and is accordingly dismissed, with costs.