

(2006) 04 AP CK 0020

Andhra Pradesh High Court

Case No: SA No. 695 of 1997

Yerragorla Narayana

APPELLANT

Vs

Gawala Nallesu and Others

RESPONDENT

Date of Decision: April 19, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 3A, 151
- Limitation Act, 1908 - Article 42
- Limitation Act, 1963 - Article 90

Citation: AIR 2006 AP 305 : (2006) 4 ALD 164 : (2006) 4 ALT 263

Hon'ble Judges: D. Appa Rao, J

Bench: Single Bench

Advocate: P. Sri Raghu Ram, for the Appellant; O. Manohar Reddy, for Respondent Nos. 1, 2, 6 and 7, for the Respondent

Final Decision: Dismissed

Judgement

D. Appa Rao, J.

The defendant in O.S. No. 344 of 1984 on the file of the learned Principal District Munsif, Anantapur, filed this appeal against the reversal judgment of the appellate Court in A.S.No. 49 of 1994 allowing the appeal when the trial Court dismissed the said suit.

2. The plaintiffs, the respondents herein, filed suit for recovery of Rs. 17,000/-towards damages for obtaining an order of interim injunction in I.A.No. 911 of 1978 in O.S. No. 658 of 1978 on the file of the learned Prl. District Munsif, Anantapur, on improper grounds.

3. It is the case of the plaintiffs that the defendant, the appellant herein, filed O.S.No. 658 of 1978 with totally false and untenable allegations claiming right over

the properties wherein there was standing crop raised by them, and filed. I.A.No. 911 of 1978 under Order 39 Rules 1 and 2 CPC and obtained temporary injunction restraining them from interfering with the property and obtained orders of ex parte interim injunction on 4-11-1978. Under the guise of the said orders, he took away the standing korra and groundnut crop valued about Rs. 17,000/-. When they filed counter, it was converted to status quo order on 6-7-1978. Subsequently, the said application was dismissed on 5-11-1978. Against which the defendant preferred an appeal in C.M.A. No. 15 of 1979. It was also dismissed on 24-9-1979. Then they filed I.A. No. 1032 of 1978 under Order 39 Rule 3(a) and Section 151 CPC claiming damages to a tune of Rs. 1,000/-. The suit was dismissed for default on 20-1-1982. I.A.No. 1032 of 1978 was also dismissed along with it.

4. The plaintiffs thereupon filed O.S. No. 344 of 1984 on 10-11-1984 claiming damages on the ground that the defendant has appropriated crop worth Rs. 17,000/-under the guise of the orders of injunction in I.A. No. 911 of 1978 in O.S. No. 658 of 1978. The defendant contested the suit on the ground that the earlier suit was never decided on merits, and the rights in the properties were never adjudicated and no loss or damage was caused to the plaintiffs. At any rate, the suit was barred by limitation as it was filed more than six years after the injunction was ceased.

5. Basing on the above pleadings, the appropriate issues were framed importantly in regard to the question of limitation and the entitlement towards damages.

6. The plaintiffs, in proof of their case, examined P.Ws.1 to 3, the 1st plaintiff as PW-1, and filed Exs.A-1 to A-19, copy of earlier order in I.A. No. 911 of 1978, commissioner's report, certified copy of the decree and judgment, registered sale deed, patta issued in their favour etc. Refuting their evidence, the defendant did not examine any witnesses, but filed Exs.B-1 to B-4 marked by consent, namely, certified copy of the petition under Order 39 Rules 1 and 2. CPC in I.A. No. 1032/79 and the order passed thereon.

7. The trial Court, after considering the evidence placed on record, opined that the defendant did not cut and carry away any crop. It was further opined that in view of the dismissal of the application in I.A.No. 1032 of 1979 claimed for damages, the suit was not maintainable. It was further held that the injunction application having disposed of on 5-12-1978, and the suit having been filed on 10-11-1984, and by virtue of Article 90 of the Limitation Act, the suit was barred by limitation. Accordingly, the suit as dismissed with costs.

8. Aggrieved by the said decision, the plaintiffs preferred A.S. No. 49 of 1994 on the file of the Principal Subordinate Judge, Anantapur. The learned Judge re-appraised the evidence opined that there was a loss of crop to a tune of Rs. 2,950/-. He opined that Section 95 of CPC provides for a summary remedy for an injury and enables to receive compensation for the injury done to him, when the application to the Court

instead of by a Suit. However, the remedy is optional. Relying a decision reported in [Inder Singh Nihal Singh Vs. Chief Commissioner, Delhi and Another,](#), opined that granting injunction does not render a party immune from all the results and consequences which follow the dismissal of a suit and therefore a suit for recovery of compensation, would He. The learned Judge observed that there was no enquiry made in I.A.No. 1032 of 1979 and it was dismissed along with the suit. The suit was filed within three years from the termination of the suit O.S.No. 658 of 1978 and as such it was not barred by limitation. Therefore, the suit was decreed for a sum of Rs. 2,950/- with interest at 6% p.a. with proportionate costs.

9. Assailing the said judgment, the defendant preferred this appeal contending that the appellate Court has committed illegality in granting a decree, without considering the maintainability of the suit u/s 95 of the C.P.C. He did not consider the question of limitation as provided under Article 90 of the Limitation Act.

10. Since there is a substantial question of law involved importantly one u/s 95 of C.P.C. and another under Article 90 of the Limitation Act, the appeal was admitted.

The points that arise for consideration are,

(1) Whether the suit is maintainable in view of Section 95 of the C.P.C. ?

(2) Whether the suit is barred by limitation under Article 90 of the Limitation Act ?

11. In order to resolve the above questions of law, it is useful to refer to note few facts for better appreciation. The defendant, the appellant herein, filed O.S.No. 658 of 1978 on 4-11-1978 for permanent injunction restraining the plaintiffs herein from interfering with the plaint schedule property and obtained a temporary injunction in I.A. No. 911 of 1978 on 4-11-1978. When the plaintiffs resisted the claim, the said order was converted into status quo on 6-7-1978. Importantly when the matter was contested, the interim injunction was vacated on 5-11-1978 confirmed in C.M.A. No. 15 of 1979 on 24-9-1979. There was no injunction from 5-11-1978.

12. Importantly, the plaintiffs filed I.A. No. 1032 of 1978 under Order 39 Rule 3-A read with Section 151 CPC claiming damages on the ground that the defendant herein under the guise of orders of injunction in I.A. No. 911 of 1978 cut and carried away the crop which is valued at Rs. 17,000/-.

13. On 20-1-1982 the said suit was dismissed. Along with it LA. No. 1032 of 1978 filed by the plaintiffs was also dismissed.

14. The plaintiffs filed O.S. No. 344 of 1984 (the judgment, which was impugned in this appeal) filed the suit for recovery of damages of Rs. 17,000/- on the ground that the defendant under the guise of orders of injunction cut and carried away the crops worth Rs. 17,000/-. The plaintiffs immediately filed I.A. No. 911 of 1978 for appointment of Commissioner to assess the crops wherein the plaintiffs did not plead that they raised groundnut crop. What all they stated that they raised korra

crop. The defendant resisted the suit both on facts as well as law. The trial Court opined, "therefore, the evidence of P.W-1 that the respondent-defendant cut and carried away the groundnut crop and he sustained a loss of Rs. 6,000/- as claimed in the plaint and as stated in his evidence cannot be believed". The trial Court opined that there was korra crop in Ac.7.00 of land, however, found that it was not cut subsequent to the orders of injunction. In fact, the orders that were passed in LA. No. 918 of 1978 dated 6-7-1978 marked as Ex.B-4 was as follows:

Heard, both parties are directed not to cut the crop that is with still uncut and the respondent is directed to keep crop already cut in his custody in the village without removing it to some other places and finally that petition was allowed to maintain status quo on 6-11-1978. In the light of Ex.B-4 the injunction order that was granted on 4-11-1978 was modified and both parties restrained and not to cut the crop on 6-11-1978 itself. There was virtually no order of injunction from 16-11-1978.

There is no independent evidence either from the plaintiff or from the report of the Commissioner that the plaintiff has cut and carried away the crop after obtaining the orders of injunction.

15. A perusal of the report of the Commissioner shows that he did not raise korra crop in Ac.7.00 of land. He had cut the crop in an extent of Ac.8.00 of land. He valued korra crop at Rs. 3,950/- deducting Rs. 1,000/- towards agricultural expenses he arrived the value of the crop at Rs. 2,950/-.

16. The plaintiffs after order of injunction was vacated by dismissal of I.A. No. 911 of 1978, filed an application in I.A. No. 1032/78 under Order 39 Rule 3(a) read with Section 151 CPC claiming damages for having obtained a wrongful orders of injunction.

17. Section 95 CPC provides award of compensation to the defendant for the existence or injury caused to him, as a result of the plaintiff, obtaining temporary injunction against him or in support. By virtue of Section 95(b) the plaintiff can claim damages to an extent of Rs. 1,000/- only. Section 95(2) CPC specifically debars the defendant from filing a suit, when the Court passes an order determining the said application.

18. The trial Court opined that the plaintiff having clutched the jurisdiction as provided u/s 95(b) and having courted an adverse order, could not claim once again by way of suit. In this regard, the trial Court relied a decision *Indersingh v. Chief Commissioner* reported in AIR 1963 Pun 158, and opined that it is open to the aggrieved defendant to recover damages or compensation for the injury caused by means of a regular action.

19. The question that falls for consideration in this appeal is whether such a claim could be made by virtue of bar u/s 95 of CPC.

20. I intend to make it clear at this juncture that it is not a case where no application was filed recouring to Section 95 CPC to any compensation against the defendant. He filed such an application I.A.No. 1032 of 1978 and the same was dismissed for whatever the reason. He did not prefer any appeal or revision against the said order.

21. In Inder Singh v. Chief Commissioner AIR 1963 Pun 158, wherein His Lordship observed that an award made by the Court u/s 95 CPC would bar a regular suit as provided by Sub-section (2). However, it was observed that the section is by no means exhaustive as until an order is made by the Court on an application preferred under this section, it is open to the aggrieved defendant to recover damages or compensation for the injury caused by means of a regular action.

22. I am in full agreement with the view expressed in the above said decision. I do not intend to discuss an hypothetical case as to what would happen, had such an application not been filed.

23. Necessarily in the present case, I hold that the suit is barred u/s 95(b) of CPC.

24. The other point that arises for consideration is whether the suit is barred by limitation under Article 90 of the Limitation Act. Article 90 reads as follows :

Description of suit	Period of Limitation	Time from which period begins to run
90. For compensation for injury caused by an injunction wrongfully obtained.	three years	When the injunction ceases

25. It is not in dispute that the plaintiffs had obtained interim injunction on 4-11-1978 and the same was vacated on 5-12-1978. From that day onwards, there was no injunction whatsoever. In fact, the defendant preferred an appeal in C.M.A.No. 15 of 1979 against the order of the dismissal of the injunction petition. However, it was dismissed confirming the order on 24-7-1979. The suit was dismissed on 20-1-1982, The plaintiffs filed the suit on 10-11-1984 claiming damages to an amount of Rs. 17,000/- on the ground that the defendant had cut and carried away the crop on which he sustained loss. A reading of the Article 90 of the Limitation Act, which I have referred to above, makes it clear that the cause of action commences on the day when the injunction "ceases". It has been ceased on 5-12-1978 and the suit having been filed on 10-11-1994 (sic 1984), is barred by limitation.

26. The learned Counsel for the respondents/plaintiffs contend that the suit having been dismissed on 20-1-1982, he will have time till 20-1-1985, a suit having been filed on 10-11-1984 it was in time.

27. The learned Counsel for the appellant relied a decision in *Mohini Mohan Misser v. Surendra Narayan Singh* ILR (1915) Cal. 550. That was a case arising under old Limitation Act IX of 1908. However, there was no change as far as this provision is concerned, the corresponding Article 42 in Schedule-I. Their Lordships after considering the said provision opined that:

It would no doubt be governed in regard to limitation by Article 42. The conduct imputed to the defendant in such a suit would be in its nature tortuous or wrongful. It is idle to say that the suit could not have been instituted until the determination of the appeal to the Privy Council. The words of Article 42 are clear. Time runs from the date "when the injunction ceases."

28. Since the injunction was ceased on 5-12-1978 and the suit having been filed on 10-11-1984, it was hopelessly barred by time. The Article 90 of Limitation Act clearly applies on all fours to the facts in the instant case. The result is that the suit to which bar as contained in Clause 95(b) CPC as well as Article 90 of the Limitation Act, applies.

29. On the facts stated above, it would be very difficult to say that the previous suit was insisted and the injunction was applied on insufficient and improper grounds. However, I do not wish to decide the appeal with reference to that consideration.

30. The second appeal, therefore, is allowed setting aside the judgment in A.S. No. 49 of 1994. Consequently the dismissal of suit O.S. No. 344 of 1984 is confirmed. However, in the circumstances, no costs.