(1880) 02 CAL CK 0006

Calcutta High Court

Case No: None

Imrit Tewari and Others		APPELLANT
	Vs	
Suput Singh and Others		RESPONDENT

Date of Decision: Feb. 13, 1880

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 32
- Limitation Act, 1963 - Section 22

Citation: (1880) ILR (Cal) 720

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.
The first point raised by Mr. Sandel on behalf of the appellants is, whether limitation does not apply to the whole of the plaintiffs'' claim.

2. It appears that the suit was brought on the 14th of December 1877 by Imrit Tewari, Kolessur Tewari, Harihur Tewari, and Jhinga Tewari, who had paid the whole of the damages decreed against them and other defendants in a former suit for cutting down some trees growing upon land, of which they were the tenants.

3. After the plaint had been filed, and before the summons to the defendants had been issued, the plaintiffs assigned their interest in the present claim to certain other persons, named Syud Mukrum Hossain and Suput Singh; and it seems, that the summons to the defendants issued in the names of those persons (the assignees), and not of the original plaintiffs in the suit. It also appears that, at the time when the assignees'' names were first introduced into the proceedings, the claim would have been barred by limitation.

4. It has been held by both the lower Courts, that the suit is not barred, because they consider that Section 22 of the Limitation Act ought to be read with Section 82

of the Code of Civil Procedure; and that, reading those sections together, this case does not fall within the meaning of Section 22 of the Limitation Act.

5. It has now been contended by Mr. Sandel, that although the original plaintiffs might have been the proper persons to sue in the first instance, and although they might have been the trustees for the persons to whom they afterwards assigned the claim, still, as the defendants were summoned to answer the suit of the assignees, limitation ought to be reckoned as from the time when those persons were first made parties to the proceedings.

6. We think that this is not so; and that the case is one to which Section 32 of the CPC is not properly applicable.

7. In the first instance, the original plaintiff''s were the only persons who could institute the suit; and when they afterwards assigned their interest, it was perhaps not necessary for the persons to whom they assigned it to become parties at all; but if they did so, they would only continue the suit, not in substitution, but in conjunction with, and as the representatives in interest of, the original plaintiffs; and that it was merely a mistake in form to have summoned the defendants at the suit of the assignees. We think, therefore, that, under the circumstances, the suit is in time.

8. Then another question of limitation has been raised, which appears to us entitled to more weight; and that is, that the payments made by the original plaintiffs in respect of which they now sue for contribution, were made at two different times.

9. A sum of Rs. 200 was first paid by them to the plaintiffs in the former suit on the 17th July 1874; and as to this it is contended, that the plaintiffs are not entitled to recover contribution, because they did not bring this suit within three years from that date.

10. Now the rateable proportion which the plaintiff''s ought to have paid, assuming that each of the persons who were made liable under the former decree were bound to contribute equally to the amount awarded, would be about Rs. 76; and Mr. Sandel contends, that as regards the difference between Rs. 76 and the sum of Rs. 200 paid on the 17th July 1874, the plaintiffs, even assuming that they are entitled to sue at all, are barred from recovering contribution.

11. This would of course depend upon the further question, which has also boon argued by Mr. Sandel, and which we shall deal with presently, viz., whether the persons against whom the original decree was made are bound to contribute equally or to any or what extent, to the sum decreed in the former suit; and this is a point, which the Court below, when the case comes before it again, will have to take into consideration.

12. But the first and main question is, whether, as between the persons against whom jointly the decree in the former suit was pronounced, there is any right of

contribution at all, and this depends [according to the rule laid down in the Full Bench case, to which we have been referred, Sreeputty Boy v. Loharam Roy (7 W.R. 384)] upon the question, whether the defendants in the former suit were wrong-doers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act. In that case no suit for contribution would lie [see also Merryweather v. Nixon (2 Sm. L.C., 546; s.c., 8 T.R., 186)] and Farebrother v. Ainslie (1 Campb. 342).

13. But, on the other hand, if the defendants in the former suit were not guilty of a wrong in that sense, but acted under a bond fide claim of right, and had reason to suppose that they had a right to do what they did, then, no doubt, they might have a right of contribution inter se; and in such case the Judge in the Court below was bound to enquire what share they each took in the transaction, because, according to circumstances, one or more of them might be excused altogether or in part from contributing; as for instance (to use an illustration put by Sir Barnes Peacock) one of them might have acted as servant and by the command of the others, or the others might have been the only persons benefited by the wrongful act; in which case those who were alone benefited, or who ordered the servant to do the act, would not be entitled to contribution.

14. It is therefore necessary, that the case should go back to the Court of first instance, in order that it may be ascertained what were the circumstances of the former suit, and what was the nature of the wrongful act of which the defendants were found guilty; and if the wrong was of such a nature as to justify a suit for contribution, then it must be further ascertained, what part these defendants took in the matter, and whether they ought to contribute at all or in what proportion.

15. Mr. Sandel appears to have offered very fair terms of compromise to his opponents, which, it may be very wise for them to accept; but unless the matter is so settled within a fortnight from this date, the judgments of both the lower Courts will be reversed, and the case will be remanded to the first Court for retrial, having regard to the foregoing observations.

16. The costs will abide the ultimate result.