(1912) 07 CAL CK 0046

Calcutta High Court

Case No: None

Bonomali Gaontia and Another		APPELLANT
	Vs	
Padma Lochan Gaontia and Others		RESPONDENT

Date of Decision: July 23, 1912

Citation: 16 Ind. Cas. 425

Hon'ble Judges: Holmwood, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to direct the registration of an appeal from original decree lodged in this Court beyond the time prescribed by the Indian Limitation Act. The decree of the Court below was made on the 28th November 1911, and was actually signed on the 1st December. The memorandum of appeal was presented in this Court on the 29th April, 1912. The circumstances, under which the appeal was presented out of time, are not disputed. The suit was for declaration of title and for recovery of joint possession of one half share of a village Adhapura and its hamlets. In the plaint, the plaintiff stated that the suit was valued at Rs. 3,075 for the purpose of payment of Court-fees, and was valued at the same sum for purposes of jurisdiction. There is no question that the valuation for purposes of Court-fees was in accordance with statutory possession. u/s 7, Clause (5), Sub-clause (6), of the Indian Court F6es Act the Court-fee was payable upon five times the annual revenue payable in respect of the property claimed. As the revenue was Rs. 615, the Court-fee was payable upon Rs. 3,075. But it is plain u/s 8 of the Suits Valuation Act, 1887, the valuation for purposes of jurisdiction was not indentical with the valuation for purposes of payment of Court-fees. For purposes of jurisdiction, the value was the market-value of the property claimed. It is not disputed that this market-value was considerably in excess of Rs. 3,075, and, in fact, it has been estimated to be between Rs. 40,000 and Rs. 50,000. It may be conceded, therefore, that the valuation for purposes of jurisdiction as made in the plaint was erroneous, and the mistake was due to the omission of the legal advisers of the plaintiffs to give effect to the

provisions of Section 8 of the Suits Valuation Act 1887. In the written statement of the defendants, the claim was resisted on various grounds, but no exception was taken to the valuation for purposes of jurisdiction. The suit was tried on the merits and ultimately dismissed. The plaintiffs lodged an appeal in the Court of the District. Judge on the 9th January 1912. That appeal was registered, and the 12th February 1912 was fixed for hearing. The defendants-respondents entered appearance on the 9th February. When the case was taken up for disposal three days later, they applied for time. No exception was taken to the competency of the Court to entertain the appeal. If exception had been taken at that stage, and had prevailed, as it was bound to prevail, the appellants would have been amply in time for the purposes of an appeal to this Court; in fact, an appeal lodged in this Court would have been in time if it had been presented as late as the 29th February 1912. At the instance of the respondents, however, the hearing of the appeal before the District Judge was adjourned till the 9th April. On that date, there was a further adjournment and the case was not taken up for disposal till the 16th April 1912. On that date, for the first time, the defendants-respondents took objection to the valuation of the suit; they contended that the suit ought to have been valued at Rs. 40,000 so that the appeal would lie not to the Court of the District Judge but to the High Court. This objection was allowed on the 19th April 1912 and the memorandum of appeal was directed to be returned to the appellant for presentation to this Court. The appellant lost no time, and, as we have already stated, lodged the memorandum of appeal in this Court on the 29th April 1912, whereupon the Rule now under consideration was issued.

2. The question in controversy is, whether the appellants have satisfied the Court that within the meaning of Section 5 of the Limitation Act, they had sufficient cause for not preferring the appeal within the period of limitation prescribed therefor. On behalf of the respondents, it has been strenuously contended that not only has sufficient cause been not made out, but that no cause sustainable in law has been assigned for non-presentation of the appeal in time. In support of this proposition, reliance has been placed upon the decisions in Sarat Chander Bose v. Saraswati Debi 34 C. 216 : 5 C.L.J. 380 and In re Coles and Ravanshear (1907) 1 K.B. 1 : 76 L.J.K.B. 27 : 95 L.T. 750 : 23 T.L.R. 32. It has further bean argued that the error on the part of the legal advisers of the plaintiffs was so gross and palpable that no consideration ought to be shown to them. We have further been reminded that the discretion to be exercised by the Court is not arbitrary but judicial and that the plaintiffs ought not to be shown any indulgence, because they are not altogether without a remedy, since, as indicated in Godefroy v. Dalton 6 Bing. 460 at p. 467 : 4 M. and Pp. 149 : 8 L.J. (O.S.) C.P. 79 : 31 R.R. 467 and De Roufigny v. Peale 12 R.R. 687 : 3 Taunt 484 they may sue their, legal advisers for damages, As pointed out, however, by Bhashyam Aiyangar, J. in Somayya v. Subbamma 26 M. 599 the remedy suggested may be no effective remedy at all; and, in our opinion, there is no room for serious discussion that the Rule in the present case ought to be made absolute and the appeal directed

to be registered.

3. It may be conceded that the plaintiffs and their advisers were under an erroneous impression and acted in oblivion of the provisions of Section 8 of the Suits Valuation Act of 1887. At the same time, the fact cannot altogether be ignored that some responsibility attaches to the defendants for the difficulty in which the plaintiffs now find themselves. If the mistake, into which the plaintiffs fell, was really so obvious and inexcusable as the defendants suggest, how is it that the latter overlooked the matter completely? If, on the other hand, they noticed the error,--an error, characterised by them as gross and palpable--it was incumbent upon them to take exception to the valuation in the Court of first instance. If, further, they were aware of the error, when the appeal was set down for hearing before the District Judge, they ought to have taken exception to the competency of the Court to entertain the appeal. As we have already explained, if such objection had been taken and had prevailed, the plaintiffs would not have been in any difficulty. The respondents, however, deliberately asked for an adjournment, and, it was not till the time for presentation of an appeal to this Court had expired, that they turned round and questioned the jurisdiction of the District Judge to entertain the appeal. Under these circumstances, even if the most stringent view were taken of the principles of law applicable to a case of this description, as laid down by the Court of Appeal in In re Coles and Ravemshear (1907) 1 K.B. 1 : 76 L.J.K.B. 27 : 95 L.T. 750 : 23 T.L.R. 32, it is clear that an order ought to be made in favour of the appellants. The same conclusion follows, even if we adopt the view taken by Lord Justice James, [International Financial Society v. City of Moscow Gas Co. 7 Ch. D. 241 : 47 L.J. Ch. 258 : 37 L.T. 736 : 26 W.R. 272 namely, that a party has a vested right in an order of the Court in his favour and ought not to be deprived of an advantage given to him by the order, unless there has been some conduct raising an equity against him or in a case of inevitable accident In re Helsby (1894) 1 Q.B. 742 : 63 L.J.Q.B. 265 : 9 R. 139 : 70 L.T. 144 : 42 W.R. 218 : 1 Manson 4]. In this view, it is needless to examine in detail the judicial decisions discussed at the Bar. The cases of Balaram Bhramaratar Ray v. Sham Sunder 23 C. 526 and Lakshmiram Mandal v. Sonatan Basar :15 C.L.J. 160 7 Ind. Cas. 775 are distinguishable on the ground that there the delay was due to the failure of the parties concerned correctly to appreciate the effect of the then recent changes in the law. The case of Sarat Chandra Bose v. Saraswati Debi 34 C. 216 : 5 C.L.J. 380 lays down principles from which we have no desire to depart in the slightest degree, but there the appellants had acted without due care and attention and were guilty of inexcusable negligence. It is worthy of note, however, that in the case mentioned, the Court expressed itself cautiously with reference to many of the observations in In rs Coles & Ravenshear (1907) 1 K.B. 1 : 76 L.J.K.B. 27 : 95 L.T. 750 : 23 T.L.R. 32 which have not been always received or applied with complete favour either in English or in Indian Courts. Baker v. Faber (1908) W.N. (Eng.) 9 Anjora Kunwar v. Babu 29 A. 638 : 4 A.L.J. 515 : A.W.N. (1907) 219 and Muruga Chetty v. Rajasami 22 M.L.J. 284 at p. 301 : (1912) 1 M.W.N. 332 : 11 M.L.T. 280 : 14 Ind. Cas.

823. No useful purpose, however, would be served by an analysis of the facts of the various cases; because, as Lord Justice Bowen, observed in In re Manchester Economic Building Society 24 Ch. D. 488 at p. 503 : 53 L.J. Ch. 115 : 49 L.T. 793 : 32 W.R. 325, the Court must avoid the great danger of crystallising into a rigid definition that judicial power and discretion which the Legislature and the rules of the Court have, for the best of all reasons, left undetermined and unfettered. What the Court has to determine in cases of this description is whether the appellant is asking what is evidently unjust. If it is, it is clear that he ought not to have it. If he is asking for what may lead to injustice, he ought not to have it except on terms which would prevent any injustice possibly being done. If what is asked is just, why should he not have it? See also Collins v. Vestry of Paddington 5 Q.B.D. 368 : 49 L.J.Q.B. 264 : 612 : 42 L.T. 573 : 28 W.R. 588. Let it be assumed that, as laid down in the cases of Karsondas Dharamsey v. Bai Gungabai 30 B. 329 : 7 Bom. L.R. 965 and Bhimrao Ramrao Desai v. Aypappa Yellappa 31 B. 33 : 8 Bom. L.R. 858 the respondents may be deemed to have acquired a valuable vested interest in the judgment of the Court below, by the lapse of time prescribed for the presentation of an appeal, yet the acquisition is made subject by the Legislature to a judicial discretion in the Court to affect such supposed right by its order in the interests of substantial justice. In the case before us, upon a review of all the circumstances stated, we are of opinion that the Rule must be made absolute and the appeal registered in this Court, but there will be no order for costs. The view we take is supported by the decision in Balwant Singh v. Gumani Ram 5 A. 591 : A.W.N. (1883) 142 where it was ruled that the circumstances contemplated in Section 14 of the Limitation Act may, by way of analogy, be treated as sufficient cause within the meaning of Section 5.