



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 6 of 2024

Date of Decision: 10.09.2024

Shri Khorshedur Rahman Khan

... Petitioner(s)

- Versus -

Md. Nashibullah SK
S/o (L) Boholuddin SK
R/o Near Gandhi Club, Hallidiganj,
P.O. Hallidiganj, P.S. Hallidiganj,
West Garo Hills, Meghalaya-794104

... Respondent(s)

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner(s) : Mr. K. Khan, Sr. Adv. with
Ms. M. Rahman, Adv.

For the Respondent(s) : Mr. D. Nandi, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No



JUDGMENT AND ORDER

1. The petitioner by of this application under Article 227 of the Constitution of India is before this Court with a prayer to set aside the impugned order dated 26.03.2024, passed by the Court of the Assistant to Deputy Commissioner, Circuit Court, Phulbari, West Garo Hills in Misc. Case No. 8 of 2023, arising out of Title Suit No. 9 of 2019, whereby the said Court had dismissed an application filed by the petitioner under Order 14 Rule 2 (2) of the CPC on the question of limitation.

2. The brief facts are that the respondent as plaintiff had instituted a Title Suit before the Court of the Assistant to Deputy Commissioner at Dadenggre, West Garo Hills, which was registered as TS No. 9 of 2019 for declaration of right, title and interest, recovery of possession and permanent injunction, against the petitioner amongst others, who was arrayed as defendant No. 11. The petitioner had then taken a specific plea under Section 3 of the Limitation Act, 1963 in his written statement, on the ground that the Title Suit was barred by limitation as the cause of action had arisen in 2001, and had prayed for



dismissal of the suit on this ground. The petitioner then filed an application under Order 14 Rule 2(2) CPC which was numbered as Misc. Case No. 8 of 2023, for framing of a preliminary issue i.e. whether the suit is barred by limitation and for a decision of the suit on the said preliminary issue. The learned Trial Court after objections had been filed to the application, then was pleased to dismiss the Misc. Case No. 8 of 2023, by the impugned order dated 26.03.2024, on the ground that the plaintiff had pursued civil proceedings with due diligence before an appropriate forum having no jurisdiction, and that the time taken in pursuing these proceedings was to be excluded from the final computation of the limitation period by virtue of Section 14 of the Limitation Act.

3. Mr. K. Khan, learned Senior counsel assisted by Ms. M. Rahman, learned counsel for the petitioner has submitted that from the plaint itself, the respondent had categorically mentioned that the cause of action has arisen in the year 2001, and as such the prescribed period for filing a civil suit for immovable property being 12 years, the Title Suit therefore being barred by limitation, the learned Trial Court ought to have dismissed the same under Section 3 of the Limitation Act. He



further submits that the question of limitation being a mixed question of law and facts, the learned Trial Court should have framed preliminary issue to allow the parties to adduce evidence accordingly. He further submits that the learned Trial Court had failed to appreciate Section 14 of the Limitation Act in its correct perspective in holding that the respondent plaintiff had executed civil proceedings with due diligence before an appropriate forum having no jurisdiction. The learned Senior counsel has then contended that for the principles of exclusion of limitation period under Section 14 to apply, three conditions must be satisfied i.e. proceedings are civil proceedings, prosecuted with due diligence and in good faith and that the failure of the prior proceedings was due to the defect of jurisdiction. In the instant case he submits the earlier proceedings were not civil proceedings and the same had been pursued before a Court of appropriate jurisdiction, and as such the impugned order being bad in law is liable to be set aside and quashed.

4. Mr. D. Nandi, learned counsel for the respondent plaintiff has submitted that the suit was not barred by limitation as the earlier proceedings were pending bona fide for judicial determination and in



such case therefore the time taken for the earlier case is excluded for the purposes of determining the period of limitation. He also submits that the earlier proceedings being under Section 145 Cr.P.C., the same are quasi-judicial proceedings which mainly arise from civil disputes, and as such the contention that the same are not civil proceedings is incorrect. It is lastly submitted that the question of limitation in the instant case being a mixture of law and facts, the same cannot be decided only as a preliminary issue of law, nor can it be decided as a preliminary issue. As such, he submits the revision is liable to be dismissed and the suit be allowed to proceed on its merits.

5. Heard learned counsel for the parties.

6. A perusal of the impugned order shows that the consideration to reject the prayer of the petitioner was based on the short finding that the respondent “*had executed these civil proceedings in due diligence in the appropriate forums having no jurisdiction*” and as such held that the time taken in pursuing these civil proceedings was to be excluded from the final computation of limitation by virtue of Section 14 of the Limitation Act. Section 14 of the Limitation Act



provides for the exclusion of time of proceeding bona fide in a Court without jurisdiction, and the same is reproduced hereinbelow, for easy reference.

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.



Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

7. The above quoted provision contemplates the exclusion of the time during which a litigant has been prosecuting with due diligence another civil proceeding against a defendant, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which lacks jurisdiction. The above provision therefore has to be given its correct purport and interpretation when benefit of the same is extended to any party.

8. From an examination of the facts at hand as noted in the impugned order, in the year 2001 when the cause of action arose, the suit premises in the proceedings under Section 145 had been kept under attachment vide an order 13.11.2001, and there was a subsequent appeal which on being dismissed for default in 2013, the respondent



had approached the Revenue Appellate Court of the GHADC, which thereafter also dismissed the case for default, on 23.03.2017. The instant suit in question i.e. T.S No. 9 of 2019, was then instituted. Another attendant fact which is important to note is the application of the petitioner which had been preferred under Order 14 Rule 2(2) CPC, which though discussed by the learned Trial Court, no definitive finding has been rendered thereon.

9. In the considered view of this Court the question of limitation in the facts and circumstances of the instant case deserves to be re-examined firstly in the light of Order 14 Rule 2(2) as to whether a preliminary issue can be framed, which can dispose of the suit on an issue of law only and secondly, whether the benefit of Section 14 of the Limitation Act will be available to the respondent in the instant case, keeping in mind that the entire issue of limitation herein, is a mixture of law and facts.

10. In these circumstances thereof, the matter of framing preliminary issue on the question of limitation, deserves to be re-examined by the learned Trial Court. Accordingly, the matter shall



stand remanded back to the Court of the Assistant to Deputy Commissioner, Circuit Court, Phulbari, West Garo Hills, for re-hearing and the same shall be completed as expeditiously as possible.

11. The impugned order dated 26.03.2024 is accordingly set aside and the matter stands disposed of.

Chief Justice (Acting)

Meghalaya
10.09.2024
"V. Lyndem PS"