

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 66 of 2003

1. State of Chhattisgarh, through the Collector, Bastar District, Jagdalpur, Chhattisgarh.

---- Appellant

Versus

1. Nand Kishore Tiwari S/o Bhagwat Tiwari, aged about 43 years, Caste Brahmin, R/o Old Bus Stand, Jagdalpur, Chhattisgarh.

---- Respondent

For Appellant – Ms. Pushpa Dwivedi, Panel Lawyer.

For Respondent – Ms. Priya Mishra and Mr. Durgesh Goyal, Advocates on behalf of Mr. S.C.Verma, Advocate.

Judgment on Board

30/06/2015

This is a second appeal. The respondent filed a Civil Suit No. 14B/94 against the appellant and pleaded that he had installed a hutment and *thela* to sell tea and food and thereby maintaining his family. On 8-10-82 without giving any notice to the respondent/plaintiff Nazul Tahsildar demolished the hutment and structure and took away the material in the hutment and the constreucure, not returned the same. Property worth Rs. 49,885/- were seized. The respondent/plaintiff gave a list of the articles to the Additional Collector, but those articles and belongings were not returned to him. The appeal filed by the respondent/plaintiff dismissed on 10-02-84, but the seized articles were not returned. On 14-01-88, he was informed by the Tahsildar that since the seized articles are not in the Nazarat, the same cannot be returned. Thereafter, the plaintiff gave a notice under Section 80 of the CPC and as the Nazul Tahsildar was representative of the State, he filed a suit against the State.

2. The appellant submitted his written statement and pleaded that as the plaintiff was encroacher on nazul land, the Nazul Tahsildar duly conducted the proceeding after due notice. The Nazul Tahsildar is not made a party hence, the suit is not maintainable. There was no any record to show that seizure and deposit of the articles in the Nazarat. The suit is time barred. No cause of action arises, Hence, the suit may be dismissed.

3. On due appreciation of the evidence adduced by the parties before the trial Court, the trial Court held that without giving an opportunity for hearing to plaintiff, his hutment and temporary *thela* was demolished. The property worth Rs. 49,885/- were seized. The Nazul Tahsildar is a necessary party as he acted as per authority given to him by the State. Hence, the proceedings was on behalf of the State. The trial Court held that as per article A, the plaintiff is entitled for the articles mentioned or its value i.e. Rs.49,885/- within two months from the date of the judgment.

4. Against the judgment and decree passed by the trial court, the appellant preferred Civil Appeal No.1B/2001 against the plaintiff. The District Judge, Bastar at Jagdalpur vide its judgment dated 30-07-2002 dismissed the appeal and affirmed the judgment and decree passed by the trial Court and held that instead of Rs.49885/-, the plaintiff is entitled to get Rs.40,000/- towards the cost of the articles along with 6% interest per annum from the date of the institution of the suit i.e. 04-06-88 and the cost of the appeal.

5. The appellant/defendant preferred this second appeal and had taken the ground that Nazul Tahsildar who conducted the entire proceeding is a necessary party; due to non-joinder of the necessary party, the suit is not maintainable and under the provisions of Section 3 of the limitation Act suit is barred by the time whether any defence for the same is taken or not. Even if the limitation may be calculated from the order of the appellate authority 10-02-84 suit could have been filed within one year from the date of dismissal of

the appeal, as per provision of Article 72 of the Limitation Act. The State is not responsible for any torturous act by the officer of the State. State is not a necessary party. The appellant submitted that the judgment and decree passed by both the Courts below may be set aside.

6. Heard learned counsel for the parties on admission.

7. Learned counsel for the appellant submitted the entire grounds taken in the second appeal and submitted that the suit was barred by the Limitation. The Nazul Tahsildar was a necessary party. The plaintiff failed to prove its case as the substantial question of law is involved regarding making a necessary party to Nazul Tahsildar as also the question of law on limitation, and prayed that substantial question of law be formulated and the appeal be heard finally after its admission as provided under Order 41 Rule 11 read with Order 42 Rule 1 of the CPC.

8. Records of the courts below are available. For appreciating the submission on admission for formulating substantial question of law, I have perused the material available in the records of the courts below.

9. From the material and evidence available in the record of the courts below, it emerges that no any notice given to the respondent is either produced or proved, no any seizure for the material and articles seized during the demolition proceeding is either filed before the trial court or proved. The appellant had examined only one witness Shri S.K.Goutam who was not present at the time of alleged demolition of hut and structure. No any specific facts narrated by the appellant's witness Shri S.K.Goutam thereby the plaintiff's pleadings and evidence remained almost unchallenged. The trial court and the first appellate court held that the suit is filed after the communication made by the appellant to plaintiff. The Document Ex.-P/3 speaks for the facts wherein the Additional Tahsildar gave memo to plaintiff that a case for encroachment was registered against the plaintiff,

encroachment was removed with force and no any article presently available in the Nazarat of Tahsil office, hence it is not possible to return. The plaintiff proved his case. He gave a list to the Additional Collector of articles taken and demolished during the proceeding vide Ex.-P/5. After appreciation of all the oral and documentary evidence, the trial court rightly held that the suit is within limitation after memo received to the plaintiff Ex.-P/3 and looking to the evidence adduced on behalf of the appellant the trial court held that the then Nazul Tahsildar was representative of the State, acted as per authority. Hence, the State is only proper party, Nazul Tahsildar need not to be impleaded as a necessary party. Consequently, on both these grounds including the other grounds the trial court decreed the suit of the plaintiff.

10. The first appellate court also has taken concurrent view after its appreciation and affirmed the decree and judgment of the trial Court only with a modification that instead cost of articles Rs.49885/-, the appellant is required to pay Rs.40,000/- as value of the articles along with 6% simple interest from the date of the filing of the suit.

11. Before this court during second appeal, question of limitation along with by not making the then Nazul Tahsildar as a necessary party substantial question of law were sought to be formulated by the appellant.

12. On due consideration, well discussed by the courts below after receipt of the Ex.-P/3, the plaintiff preferred the suit, it cannot be held as time barred because computation of time prayed by the defendant is not as per facts and law also as the then Nazul Tahsildar was a representative of the State thereby entire proceeding conducted at the spot was on behalf of the State and the Nazul Tahsildar was representing the State thereby every act of the official was act on behalf of the State, because otherwise is not proved that the act of the then Nazul Tahsildar was beyond his authority, exclusive, illegal

or arbitrary. Both the courts below held that the then Nazul Tahsildar was not a necessary party.

13. The appeal is heard with a prayer to formulate question of law. On due consideration, this is not a fit case for admission also for formulation of any substantial question of law. Consequently, the second appeal dismissed in motion stage itself at the time of hearing on admission also for prayer to formulate substantial question of law under provisions of Order 41 Rule 11 read with Order 42 Rule 1 of the CPC, the appeal ought to be dismissed and is hereby dismissed.

14. No order as to cost.

Sd/-
(C.B.Bajpai)
JUDGE

