In the High Court of Punjab and Haryana at Chandigarh

RSA No. 613 of 2014(O&M)
Date of Decision:27.8.2018

Inderjit Kaur

---Appellant

vs.

Balwinder Kaur

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. S.S.Swaich, Advocate
for the appellant
Mr. Parvinder Singh, Advocate
for the respondent

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Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for rendition of accounts for use and occupation by the appellant of residential buildings, detailed in head note of the plaint, by claiming half share to be owned by the respondent-plaintiff was decreed by the trial court and affirmed in appeal by the District Judge, Fatehgarh Sahib.

The parties to the lis are real sisters and daughters of late Sh.Ajit Singh. Ajit Singh was erstwhile owner of the suit properties and he passed away leaving behind the parties to the suit as his daughters and Smt. Pritam Kaur his widow. Smt. Pritam Kaur died in the year 1993. The respondent-plaintiff claimed half share in the suit property on the basis of inheritance to estate of Sh. Ajit Singh and Smt. Pritam Kaur, her parents. It is averred that after death of Smt. Pritam Kaur, the appellant has been managing all the affairs of renting out the premises mentioned at (i) and the other premises is used by the appellant for her residence.

The sole submission made by counsel for the appellant-defendant is that claim of the respondent-plaintiff for rendition of accounts in regard to the properties in question beyond a period of three years from the date of institution of suit in December 2009 is barred by limitation and accordingly, the judgments and decrees passed by the courts are liable to be modified. In support of his contention, he has referred to Articles 51 and 52 of Limitation Act, 1963 (in short "the Act") that provides a period of three years for filing suit qua profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant and three years for arrears of rent from the date when arrears become due.

Counsel for the respondent has refuted contention of counsel for the appellant by contending that Article 89 of the old Limitation Act or Article 3 of the Act would be attracted in the circumstances of the present case that provides limitation for filing suit by a principal against his agent for movable property received by the latter and not accounted for and the period of three years would begin to run when the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. In support of his contention, he has relied upon judgment of Privy Council **Mudanna Virayya vs. Mudanna Adenna and others AIR 1930 Privy Council 18.** Further reference has been made to judgment of Hon'ble the Supreme Court **Khila Dhish and others vs. Mool Chand and others 1969(3) SCC 411** and Division Bench judgment of this Court **Smt. Harbir Kaur vs. Shri**

Charan Singh Tiwana and others 1984 PLR 342.

Counsel for the appellant, in reply, would urge that in **Khila Dhish and others' case (supra),** Dharam Dass made a statement before the Civil Judge on 28.8.1951 that he was willing to account for all the money received by him in respect of report dated 1.2.1938 submitted by him in suit No. 2 of 1937 and the said admission was taken into consideration to hold suit of the respondents instituted on 27.7.1950 being not barred under Article 89 of the Act. It is argued that the respondent cannot derive advantage of Division Bench judgment of this court for the reason that though the respondent has raised a plea in para 8 of the plaint that the appellant has refused to render accounts but she personally did not appear in the witness box to substantiate averments raised in para 8 or with regard to cause of action and limitation in para 12 thereof. It is further contented that the respondent is a resident of Canada and she filed the suit through her attorney Chajju Singh and it was the attorney who appeared in the witness box.

I have heard counsel for the parties, perused the paper book particularly the judgments impugned.

The question that calls for determination is whether the suit for rendition of accounts since 1993 is barred by limitation except for a period of three years from the date of institution of the suit.

Counsel for the appellant has not disputed that the parties are co-owners of the suit property to the extent of half share each . Claim of the appellant with regard to her entitlement of 2/3rd share in the suit property by claiming exclusive right to the share of Smt. Pritam Kaur has been negatived in suit for partition by the respondent-plaintiff and the litigation has been finalized with dismissal of RSA No. 614 of 2014 decided on 13.7.2015. Counsel for the appellant has also not disputed that if one of the co-sharers has received movable property for himself as well as on behalf of others, he has acted as an agent for others. In this view of the matter, contention raised by counsel for the appellants that Articles 51 and 52 of the Act would be attracted in the given circumstances, is misconceived and liable to be rejected. On the contrary, Article 3 (old Article 89) of the Act is applicable. Article 3 of the Act, germane to the controversy, reads as follows:-

Description of suit	**Period of limitation**	**Time from which period begins to run**
By a principal against his agent for movable property received by the latter and not accounted for.	Three years	When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates

The Division Bench judgment of this Court in **Smt. Harbir Kaur's case (supra)** has held, reads thus:-

> "I have considered the argument and find force in it. Article 3 provides that a suit by a principal against his agent for movable property received by the latter and not accounted for can be filed within a period of three years from the date when the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. The Article is equivalent to Article 89 of the Limitation Act, 1908, which was interpreted by their Lordships

in Mudanna Virrayya's case (supra). It was held there that a claim by a member of a Hindu joint family against the manager of the joint property in respect of certain family outstanding alleged to have been collected and misappropriated by the latter, is governed by Article 89. It is now to be seen as to when the cause of action in the present case will arise. The agency in the present case would continue between the plaintiffs and the defendants till possession of the property was delivered under the decree to the plaintiffs. It has not been shown that any demand was made and refused during the period of agency. Consequently, the suit could be filed within three years after the termination of the agency. The possession was delivered to the plaintiffs, as already stated above, on 27th January, 1971, and the suit for rendition of accounts was filed on 19th November, 1970. Thus, suit was within limitation. I hold accordingly."

In the case at hand, plea of the respondent-plaintiff is that she requested the appellant to settle the accounts with regard to rent of the building (i) and the building being used for her own use and occupation but she has been putting off the matter on one pretext or the other and now the appellant has flatly refused to render the accounts. In para 12 of the plaint, it is averred that the aforesaid reasons have provided a cause of action to the plaintiff for filing the suit which is filed at the earliest and without any delay. In response to para 8 of the plaint, plea of the appellant is that the respondent has no right to claim rendition of accounts as alleged. There is no specific denial to the averments that the respondent requested for submission of accounts and the appellant had been putting off the matter on one pretext or the other and now she has refused to render the accounts.

Order 8 Rule 5 of the Code says that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. The proviso gives discretion to the court to require any fact so admitted to be proved otherwise than by such admission.

Counsel for the appellant has failed to point out any materials brought forth in cross examination of attorney of the respondent that either he is not well conversant with the facts of the case or his testimony is not sufficient to prove plea of the respondent. Taking into consideration averments raised in the plaint with no specific denial by the appellant, suit for rendition of accounts from 1993 filed by the respondent can neither be held to be barred by limitation nor the contention raised by counsel for the appellant that the respondent is entitled to rendition of accounts only for a period of three years before institution of the suit is meritorious or tenable. As such, the question formulated is answered against the appellant and in favour of the respondent.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

(Rekha Mittal)
Judge

27.8.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No