

24.4.2024
11
Ct. no. 652
sb

C.O. 2465 of 2016

Mst. Jamila Khatun & Ors.
Vs.
Sk. Afsar Uddin Ahmed & Ors.

Mr. Probal Kr. Mukherjee, Sr. Adv.
Ms. Shebatee Datta ...for the Petitioners

Mr. Aniruddha Chatterjee
Mr. Prithwish Guriafor the O.P. no. 1

The opposite party/plaintiffs filed a suit for declaration and consequential relief being Title Suit no. 46 of 2016 against the petitioners. The petitioners submit that the opposite parties had previously filed two purported suits for declaration of heirship and injunction in the year 1966. The said two suits were filed before the court of the learned Civil Judge (Junior Division), Tamluk being Title Suit no. 262 of 1966 and Title Suit no. 263 of 1966. Both the suits were subsequently withdrawn by the plaintiff/opposite party in the year 1968 vide two separate orders dated April 29, 1968 and April 18, 1968 respectively and both the two suits were withdrawn with leave to sue afresh on the same cause of action, if not otherwise barred.

The petitioners herein as defendants appeared in the present suit and filed an application for rejection of plaint under Order VII rule 11(d) of the Code of Civil

Procedure on the ground that the suit is barred by limitation under Order XXIII rule 2 of the Code. The opposite party herein filed written objection and the court below by the order impugned, was pleased to reject the defendant's aforesaid prayer.

Being aggrieved by that order, Mr. Mukherjee, learned counsel for the petitioners submits that the court has acted illegally and with material irregularity in exercising jurisdiction and did not take into consideration the fact that the previous suits were withdrawn with leave to sue afresh on the same cause of action, but the present suit has not been filed within the prescribed period and as such, the suit is barred by limitation as mentioned in order XXIII rule 2 of the Code.

Mr. Mukherjee, learned counsel on behalf of the petitioners further contended that learned Court below has failed to appreciate that if a suit is withdrawn under Order XXIII rule 1 of the Code with leave to sue afresh, then the plaintiff shall be bound by the law of limitation in the same manner as if the first suit has not been instituted. The court below also failed to consider that the earlier suit which was withdrawn in the year 1968 with leave to sue afresh and the present suit which was filed in the year 2016, there is a gap of much more than 12 years and therefore, the suit is clearly barred by law.

Accordingly, the petitioners have prayed for setting aside the order impugned.

In this context, the petitioners have relied upon a judgment in the case of **University of Agricultural Sciences Vs. Saroj Gupta** reported in **(2021) 16 SCC 768**.

Mr. Chatterjee, learned counsel for the opposite parties submits that the cause of action of the present suit arose on 10th September, 2014 and lastly on 25th January, 2016 and as such the suit is well within the period of limitation and is not barred by law. In such circumstances, the court below has not committed any mistake in rejecting the prayer made by the defendant and the order impugned does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. On perusal of plaint, it appears that plaintiffs in paragraph 33, have averred that cause of action for the present suit arose on and from 10.9.2014 and lastly on 25.1.2016. Needless to reiterate that an application for rejection of plaint can be entertained if the allegations made in the plaint taken to be correct as a whole on its face value shows that the suit is barred by any law. Now on going through the plaint in the suit, it appears that the averments does not suggest that the suit is barred on pure question of law. The court below

in support of his rejection order held that plaintiff's plaint and supportive document states that Hamed Bibi and Jayeda Bibi had got life interest in the properties under the suit and for which earlier suits were withdrawn and the plaintiffs were debarred from filing the present suit so long they were alive and relying Article 65(b) of Limitation Act, court below came to impugned finding. The plaint and plaintiff's supportive documents by no stretch of imagination suggests that suit is barred on pure question of law. Accordingly, I find that the order impugned does not call for interference.

In such view of the matter, C.O. 2465 of 2016 is dismissed. However, this order will not preclude the petitioners to make appropriate application before the court below questioning the maintainability of the suit and in the event of filing such application before the court below, all the issues raised by the parties, shall be kept open for adjudication, without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)