

APPELLATE CIVIL.

Before Inder Dev Dua, J.

FIRM JUGAL KISHORE-JAGDISH PRASAD,—

*Appellant.**versus*THE STATE OF DELHI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 54-D of 1956.

1960
 August 4th.

Indian Limitation Act (IX of 1908)—Article 14—Whether applies to a suit by complainant for recovery of goods which were subject-matter of theft and were forfeited by the magistrate on the ground that the complainant failed to prove the ownership of the goods—Order of the magistrate—Nature of—Whether judicial—Court of justice—Whether can be considered an officer of Government within the meaning of Article 14—Law of Limitation—Applicability of.

Held, that an order of a magistrate forfeiting the goods which were subject-matter of theft on the ground that the complainant failed to prove that he was the owner of the goods and the accused did not claim the goods to be his is a judicial order and does not fall under Article 14 of the Indian Limitation Act. A judge exercising his judicial functions is a civil court within the meaning of the Limitation Act and is not an officer of Government acting in his official capacity within the meaning of Article 14 of the Indian Limitation Act. This article, therefore, does not apply to a suit by the complainant to recover the property forfeited by the magistrate. The order of the magistrate need not be set aside before the claimant's title is upheld by civil courts.

Held, that unless an Article in the Limitation Act clearly and without doubt applies to the case made out in a plaint, a litigant should not be non-suited on the ground of time bar. The law of limitation is not to be utilised as a trap for depriving the citizens of their right to establish their claims in a Court of law but is really

meant to prevent stale cases being revived and indeed they are for this reason called "statutes of repose". The law of limitation is to be strictly construed in respect of a right to proceed and a citizen is to be non-suited only if his case clearly falls within the letter of a provisions of the statute of limitation.

Regular Second Appeal from the decree of the Court of Shri S. B. Capoor, District Judge, Delhi, dated the 10th July, 1956, reversing that of Shri Jasmer Singh, Sub-Judge, 1st Class, Delhi, dated the 30th January, 1956, and dismissing the plaintiff's suit but leaving the parties to bear their own costs throughout.

MOHAN SINGH, ADVOCATE, for the Appellant.

KISHAV DAYAL AND MR. B. R. MALIK, ADVOCATES, for the Respondent.

JUDGMENT

DUA, J.—The only question which arises for decision in this Regular Second Appeal is whether the suit is barred by limitation by virtue of Article 14 of the Indian Limitation Act.

2. The suit out of which this appeal has arisen was instituted on 13th February, 1952, on the ground that on 23rd March, 1949, certain bags of *supari Mangolari* and *zira* along with certain other goods, which do not concern us at this stage, had been stolen from the plaintiff-firms godown. The theft was duly reported to the police and during investigation six bags of *supari* were recovered from defendant No. 4, M/s. Permehari Dass-Suraj Bhan, on 24th March, 1949, and four bags of *zira* were recovered from the shop of defendant No. 3, M/s. Bulaqi Das Iqbal Chand. After investigation, M/s. Bulaqi Das Iqbal Chand and Salik Chand, defendant No. 5, were challaned under Sections 457/411, Indian Penal Code. In those proceedings none of the accused laid any claim to the property either before the police or in the criminal Court. The accused persons were acquitted by the Magistrate on the finding that the plaintiffs had not been proved to be the owners of the goods and since the articles recovered were

Dua, J.

Firm Jugal
Kishore Jagdish
Prasad,
v.
The State of
Delhi and others

Dua, J.

not claimed by the accused persons, the learned Magistrate directed forfeiture of the property to the Government. A revision against this order was filed in the Court of the Additional Sessions Judge, but the order of the Magistrate was upheld and it was observed that the complainant should establish his title to the goods in question in a civil Court. It is in these circumstances that the present suit was filed which was decreed by the trial Court, but on appeal by defendants Nos. 3 and 4 the learned District Judge, while upholding the plaintiff's title to the goods in question, reversed the decision of the Court below on the ground that under Article 14 of the Indian Limitation Act the suit should have been filed within one year from the order dated 10th August, 1950, when the Magistrate forfeited the goods in question.

3. On second appeal, the learned counsel for the plaintiff-appellants has questioned the applicability of Article 14 of the Indian Limitation Act to the present case. This Article is in the following terms :—

“To set aside any act of order of an officer of Government in his official capacity, not herein otherwise expressly provided for

One year

The date of the act or order

The counsel has contended that the present suit is not for setting aside any act or order of an officer of Government in his official capacity with the result that the period of limitation prescribed in Article 14 does not cover his case. In the second place he has contended that the order of the criminal Court passed on the judicial side could not be considered to be an order of an officer of Government in his official capacity.

4. In my opinion there is force in both the contentions. It is well-recognised that the law of

limitation is to be strictly construed in respect of a right to proceed and a citizen is to be non-suited only if his case clearly falls within the letter of a provision of the statute of limitation. In the present case, there is no prayer in the plaint for setting aside the order of the Magistrate forfeiting the goods and indeed it is asserted at the Bar that there is no express provision of law which makes such orders final till set aside by a competent Court of civil jurisdiction. Indeed such an order need not be expressly set aside before the claimant's title is upheld by civil courts. The decision in *Gangu and others v. Maharaj Chand and others* (1), on which reliance is said to have been placed in support of the view of the learned District Judge, was obviously influenced by the provisions of the Punjab Redemption of Mortgages Act, which makes the order passed by the Collector final subject to a suit to establish the right claimed by a party. It is argued that there is no such provision making it obligatory on a party to establish such a claim failing which the order becomes conclusive.

Firm Jugal
Kishore Jagdish
Prasad
v.
The State of
Delhi and others

Dua, J.

5. The question whether a Court of justice can be considered to be an officer of Government and Court's orders to be orders in the official capacity of such officer came up for consideration before a Bench of the Bombay High Court in *Govinda Bala v. Gana Abaji* (2), where it was observed that a Judge exercising his judicial functions in a civil Court within the meaning of the Limitation Act and is not an officer of Government acting in his official capacity within the meaning of Article 14. This decision was followed by Divatia, J., in *M. S. Bhopshetti v. B. V. Bhat* (3). In the latter ruling an order of the Bench

(1) A.I.R. 1934 Lahore 384 (F.B.)

(2) 10 B.L.R. 749.

(3) A.I.R. 1940 Bom. 188.

Firm Jugal
Kishore Jagdish
Prasad
v.
The State of
Delhi and others

Dua, J.

Magistrates under Sections 110 and 111 of the Bombay Municipal Boroughs Act was held not to be an order within the contemplation of Article 14 of the Indian Limitation Act. An order of the Magistrates, according to the reported decision, was a judicial and not a quasi-judicial or executive order, subject to revision by the Sessions Court, and a judicial order, it was expressly laid down, does not fall under Article 14.

6. On behalf of the respondents, nothing has been said in opposition and indeed the learned counsel did not find it possible to support the order of the learned District Judge, which he was constrained to concede to be against the general trend of reported cases.

7. Before concluding, I may observe that unless an Article in the Limitation Act clearly and without doubt applies to the case made out in a plaint, a litigant should not be non-suited on the ground of time bar. The law of limitation, as is well-known, has not to be utilised as a trap for depriving the citizens of their right to establish their claims in a Court of law but is really meant to prevent stale cases being revived and indeed they are for this reason called "statutes of repose". In this connection it would not be out of place to state that in the written statement the Union of India had not raised the plea of limitation which had been raised only by the defendants Nos. 3 and 4, who admittedly did not claim any title in themselves. After the claim had been decreed by the trial Court, it was not the Union of India which went up in appeal, but defendants Nos. 3 and 4, who obviously had no *locus standi* to question the decree for goods passed in favour of the plaintiffs. It is true that the trial Court having burdened

them with costs, they could have made a grievance of the decree of the Court of first instance to this limited extent, but it is difficult to understand what right they had to question the decree with respect to the goods passed in favour of the plaintiffs. But no objection having been taken to the competency of the appeal in the Court of the District Judge, I need not pursue this matter any further. In the instant case, in my opinion, the language of Article 14 cannot, without straining it, be held to bar the plaintiffs' right to institute the present suit as laid in the plaint. So far as the merits are concerned, both the Courts have upheld the plaintiffs' title.

Firm Jugal
Kishore Jagdish
Prasad
v.
The State of
Delhi and others

Dua, J.

8. For the reasons given above, this appeal succeeds and setting aside the judgment and decree of the learned District Judge, I restore those of the trial Court. In the peculiar circumstances of the case, however, the parties are left to bear their own costs in this Court.

R.S.

REVISIONAL CRIMINAL.

Before Shamsher Bahadur, J.

STATE,— *Petitioner*

versus

MEHRO AND OTHERS,—*Respondents.*

Criminal Revision No. 10-D of 1960.

Suppression of Immoral Traffic in Women and Girls Act (CIV of 1956)—Offences under—Investigation of—Whether can be held by police officer other than special police officer—Section 13(I) “Dealing with offences”—Meaning of—Whether includes investigation.

1960
August 4th

Held, that a police officer, other than a special police officer appointed under sub-section (I) of section 13 of