

Sadhi and another v. Atma Singh and others (D. V. Sehgal, J.)

(11) We are accordingly of the opinion that in so far as the real import of the first two questions regarding the validity of the notice of demand or whether the same was barred by limitation, is concerned, the same falls outside the purview of the appellate order of the Tribunal. As already stated, learned counsel for the assessee could not give any cogent reason in support of his submission that in a case where the demand raised following an order made under section 271 (1) (c) of the Act within the period of limitation, is defective, the order imposing the penalty is rendered invalid or as having been made beyond the period of limitation. We are accordingly of the opinion that the Tribunal was quite justified in refusing to state the case and refer those two questions for the opinion of this Court. Clearly, the third question is a question which is consequential to the first two questions and if no statement of case can be called for in respect of those two questions, no statement of case can be called for in respect of the third question as well. The last two questions are, as already mentioned, questions of fact and no statement of the case can be called for in respect of them.

(12) In the result, we find no merit in this application under section 256 (2) of the Act, which fails and is dismissed.

S. C. K.

Before D. V. Sehgal, J.

SADHI AND ANOTHER,—Appellants.

versus

ATMA SINGH AND OTHERS,—Respondents.

Second Appeal from Order No. 58 of 1986.

August 17, 1987.

Evidence Act (I of 1872)—Sections 78(6) and 86—The High Court (Punjab) Order, 1947—Section 13—Indian Independence Act (XXX of 1947)—Section 9—Copy of judgment and decree of Lahore High Court—Such decision given before appointed day—Such copy certified by Copying Agency of Lahore High Court—Admissibility of such copy in evidence.

Held, that the provisions of the High Court (Punjab) Order, 1947, clearly take the judgment and decree of the Lahore High Court out of the purview of Section 86 of the Indian Evidence Act, 1872, and

for this very reason the rigors of Section 78(6) of the Act shall not apply to the same. A look at the copy of the judgment clearly shows that the certified copy was originally prepared and certified by the Supervisor, Copying Agency of the High Court of Judicature at Lahore. It was then certified to be a true copy by the Examiner Copy Supply Section of the Lahore High Court. Copy of the decree also shows that it is the photostat copy of the original decree from the record of the High Court at Lahore which bore the signatures of Superintendent (Civil) and the Deputy Registrar of the High Court. The photostat copy was then certified by the Supervisor Copying Section. These copies were later attested by the First Secretary to Deputy High Commissioner for India. The above judgment and decree are not to be regarded as judgment and decree of a foreign country. These are in fact to be treated as judgment and decree of this High Court. The judgment and decree were admissible in evidence and were rightly so admitted by the learned trial Court.

(Paras 5, 6 and 8)

Second Appeal from the order of the Court of Shri M. S. Lobana Additional District Judge, Patiala dated 15th April, 1986 reversing that of Shri G. S. Jhaj Sub Judge 1st Class, Fatehgarh Sahib dated 28th February, 1985 accepting the appeal and setting aside the judgment and decree under appeal and remanding the case to the trial court for a fresh decision in the light of finding to be recorded on issue No. 1 after affording reasonable opportunity to the plaintiffs to prove the judgment and decree sheet on which they have based their claim in accordance with the provisions of Section 78(6) and Section 86 of the Evidence Act and directing the parties to appear before the trial court on 26th April 1986 and leaving the parties to bear their own costs.

K. S. Grewal, Advocate, for the Appellants.

S. N. Chopra, Advocate, for the Respondents.

JUDGMENT

D. V. Sehgal, J.

(1) This judgment shall dispose of S.A.O. No. 47 and 58 of 1986 as both of them are directed against the judgment dated 15th April, 1986 of the learned Additional District Judge, Patiala, whereby he set aside the judgment and decree dated 28th February, 1985 passed by the learned Subordinate Judge 1st Class, Fatehgarh Sahib and remanded the case to the trial Court for a fresh decision. Reference to the parties shall be made from S.A.O. No. 58 of 1986.

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(2) Only skeletal facts would be sufficient to appreciate the point of law involved in these appeals. Jiwa Singh father of the plaintiff-appellants sold half share of the land measuring 110 Kanals 2 Marlas out of square No. 27 in Chak No. 22 G. B. along with his share in the residential *Ahata* now in Pakistan to the predecessor-in-interests of the respondents for Rs. 9,000,—*vide* sale deed dated 3rd March, 1941. Shadi alias Sadhu Singh appellant No. 1, who was then a minor challenged the sale through his next friend under custom on the ground that the sale was bad for want of any legal necessity and shall, therefore, not affect his reversionary rights after the death of the alienor. The suit was decreed by the Court of first instance. However, the decree was reversed by the Additional District Judge, Lyallpur, on appeal. A Regular second Appeal No. 1954 of 1945 filed by appellant No. 1 succeeded and the decree in his favour as passed by the trial Court was restored,—*vide* judgment and decree of the High Court of Judicature at Lahore dated 25th June, 1947. On the partition of the country in the year 1947 the vendees migrated to India and were allotted land in lieu of that which they had purchased from Jiwa Singh in the revenue estate of Dedhran and Kandipur in tehsil, Sirhind, District Patiala as displaced persons. Jiwa Singh died on 9th November, 1977. The appellants then filed the instant suit for possession of half share of the land allotted to the respondents in lieu of the land alienated by Jiwa Singh on payment of Rs. 900/- as per terms of the judgment and decree of the High Court of Judicature at Lahore. The suit was resisted by the respondents on various grounds but the same was ultimately decreed by the learned Subordinate Judge 1st Class, on 22nd February, 1985. On appeal, however, the said judgment and decree has been set aside by the learned Additional District Judge and the case has been remanded to the trial Court.

(3) The learned Additional District Judge has held that the certified copies of the judgment and decree of the High Court of Judicature at Lahore Exhibits P.30 and P.31 were admitted into evidence by the learned trial Court subject to the objection of the counsel for the respondents with regard to their admissibility. These copies were not certified in accordance with law. The certificates on them did not comply with the requirement of sub section (6) of Section 78 of the Evidence Act (for short the Act). Instead of giving the certificate in terms of the aforesaid provisions the First Secretary to the Deputy High Commissioner for India in Pakistan had merely endorsed the words 'attested' on the copy

of the judgment Exhibit P.30. The copy of the decree sheet Exhibit P.31 is also not certified in accordance with the requirements of law. The learned Additional District Judge observed that it seems that the original decree sheet was sent for in the Embassy of India at Islamabad for inspection and the certificate that was endorsed on the copy is to the effect that it had been seen in the Consular Section of the Embassy but this does not fulfil the requirement of law. Relying on *Kotiswar v. Paresh nath*, (1) the learned Additional District Judge considered it in the interest of justice that reasonable opportunity should be afforded to the appellants to prove the judgment and decree sheet on which they had based their claim in accordance with the provisions of Section 78(6) and Section 86 of the Act. The trial Court was, therefore, directed, while remanding the case, to afford opportunity to the appellants in accordance with the observations contained in the judgment. Both the parties have felt aggrieved against the judgment of the learned Additional District Judge. S.A.O. No. 47 of 1986 has been filed by the respondents. They contend that the question of admissibility of the documents was kept open when Exhibits P. 30 and P.31 were adduced in evidence. No doubt this objection was not decided by the trial Court when the documents were admitted into evidence but at the time of arguments the objection was overruled by the trial Court and relying on these documents it had passed its judgment and decree. The learned Additional District Judge, therefore, wrongly relied on *Kotiswar's* case, which had no applicability. Since the learned Additional District Judge had reached at a finding that the copies of the judgment and decree Exhibits P.30 and P.31 do not fulfil the requirements of Sections 78(6) and 86 of the Act, it ought to have allowed the appeal. There was no occasion for remanding the case to the trial Court.

(4) On the other hand, S.A.O. No. 58 of 1986 has been filed by the appellants. Their contention is that copies of the judgments and decree Exhibits P. 30 and P. 31 fully comply with the requirement of law and had been rightly admitted into evidence by the learned trial Court. The view taken to the contrary by the learned Additional District Judge is not correct and is, therefore, not sustainable. They contended that instead of passing the judgment under appeal and remanding the case to the trial Court,

(1) A.I.R. 1956 Cal. 205.

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the learned Additional District Judge should have decided the same on merits and dismissed the appeal of the respondents.

(5) I have heard the learned counsel for the parties and have also perused the record which was requisitioned from the learned trial Court. In my view the learned Additional District Judge wrongly considered the certified copies of the judgment and decree Exhibits P. 30 and P. 31 of the High Court of Judicature at Lahore as those of "foreign judicial records" coming within the purview of Section 78 (6) and Section 86 of the Act. The judgment and decree were passed by the High Court at Lahore on 25th June, 1947 i.e. before the partition of the country on 15th August, 1947. The High Court (Punjab) Order 1947 was made by the Governor General in exercise of the powers conferred by Section 9 of the Indian Independence Act, 1947. It *inter alia*, provided as under :—

13. (1) Subject as hereinafter provided, the High Court at Lahore shall have no jurisdiction in respect of the territories for the time being included in the Province of East Punjab or in the Province of Delhi.

(2) Notwithstanding anything contained in this order:—

(a) any proceedings which, immediately before the appointed day, are pending in the High Court at Lahore on its original side, including any proceedings then pending in the said High Court as a court of reference, shall be heard and determined by that court;

(b) the High Court at Lahore shall have the like jurisdiction to hear and determine any appeal from an order of a judge of the said court on its original side as if this Order had not been made, and the High Court of East Punjab shall have no jurisdiction to hear or determine any such appeal; and

(c) the High Court at Lahore shall have the like jurisdiction to review any order made by any judge of the said High Court as it would have had if this Order had not been made, and the High Court of East Punjab shall have no jurisdiction to review any such order.

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certified by the supervisor Copying Agency of the High Court of Judicature at Lahore. It was then certified to be a true copy by the Examiner Copy Supply Section of the Lahore High Court, later attested by the First Secretary to Deputy High Commissioner for India in Pakistan at Lahore. Copy of the decree Exhibit P. 31 shows that it is the photo stat copy of the original decree from the record of the High Court at Lahore which bore the signatures of Superintendent (civil) and the Deputy Registrar of the High Court. The photo stat copy was then certified by the Supervisor Copying Section under Section 76 of the Act on 13th July, 1980. The endorsement on Exhibit P. 31 shows that the original was then seen in the Consular Section, Embassy of India at Islamabad.

(6) Learned counsel for the respondents relying on *Badat and Company, Bombay v. East India Trading Company*, (2) contends that read with Section 86 of the Act the third condition under Section 78 (6) *ibid* which requires to be satisfied is character of the document according to the law of the foreign country and the same has not been satisfied. As already observed above the judgment and decree Exhibits P. 30 and P. 31 are not to be regarded as judgment and decree of a foreign country. These are in fact to be treated as judgment and decree of this High Court. Their character as judgment and decree cannot, therefore, be brought into question in view of the provisions of the High Court (Punjab) Order, 1947. Learned counsel for the respondents then referred to a Division Bench judgment of this Court in *The State v. Abdul Hamid and another*, (3) The facts of this case are clearly distinguishable. A certified copy of the judgment delivered after 15th August, 1947 by a Magistrate at Lahore was sought to be adduced in evidence. This judgment was rightly treated as a foreign judgment within the meaning of the Act. Its ratio cannot be applied to Exhibits P. 30 and P. 31 in the case in hand.

(7) Lastly, learned counsel for the respondents has pointed out to the contents of the decree Exhibit P. 31 and submitted that the same does not mention the description of the property. This contention in my view has no bearing on the admissibility of Exhibit P. 31 into evidence. The question whether the decree Exhibit P. 31 can be connected with the property in dispute relates to the merits of the case and shall be gone into by the learned Additional District Judge while deciding the appeal.

(2) A.I.R. 1964 S.C. 538.

(3) A.I.R. 1957 Pb. 86

(8) Consequently, I hold that the judgment and decree of the High Court of Judicature at Lahore, Exhibits P. 30 and P. 31 were admissible in evidence and were rightly so admitted by the learned trial Court.

(9) I, therefore, allow S. A. O. No. 58 of 1986 and set aside the judgment dated 15th April, 1986 and direct the learned Additional District Judge to decide the appeal on merits by duly taking into account the copies of the judgment and decree Exhibit P. 30 and P. 31 which were rightly admitted into evidence. S. A. O. No. 47 of 1986 being without merit is dismissed. The parties are, however, left to bear their own costs.

(10) The parties, through their counsel, are directed to appear before the learned Additional District Judge, Patiala, on 25th September, 1987 when he shall take further proceedings in the appeal in accordance with law. The record of the trial Court which was requisitioned from it should be sent to the Court of learned Additional District Judge to facilitate the disposal of the appeal by him under advice to the trial Court.

S. C. K.

Before H. N. Seth, C.J. and M. S. Liberhan, J.

KRANTI KUMAR CHOPRA,—*Applicant.*

versus

GOVERNMENT OF INDIA and others,—*Respondents.*

*Civil Misc. No. 1491 of 1986 in
Civil Writ Petition No. 738 of 1979.*

June 5, 1987.

Constitution of India, 1950—Article 226—Limitation Act XXXVI of 1963—Section 5—Court dismissing application for review of order passed in writ proceedings both on merits as well as being belated—Where such order not set aside by a competent court—High Court—Whether has jurisdiction in subsequent proceedings to decide an application for condoning delay in presenting review application.