

MUNSHI RAM

v.

NARSI RAM & ANOTHER

January 14, 1983

[P.N. BHAGWATI AND E.S. VENKATARAMIAH, JJ.]

Limitation Act, 1963 (Act XXXVI of 1963), Article 97 read with Section 2 (h) read with proviso to Section 21 (1), scope of—Non-joinder of the defendant due to bona fide mistake discernible from official document but rectified later by means of an application without delay—Plea of Bar of limitation must fail—Code of Civil Procedure, Order I, Rules 9 & 10—Amendment of pleadings under Order VI, Rule 17 is not necessary.

The appellant filed a suit in the court of sub-Judge Kaithal for possession of a piece of land in exercise of his right of pre-emption against respondents 1 and 2 alleging that they had purchased the land from his father, Babu Ram under a registered sale-deed dated May 16, 1977 in total discharge of his right of pre-emption. He stated in the plaint that the cause of action had arisen on May 16, 1977 and hence the suit filed on January 29, 1977 was in time. The certified copy of the sale deed issued by the Registration Office recited that the land in question had been sold in favour of respondents 1 and 2 only. Respondents 1 and 2 filed their written statement on May 17, 1978 and took a plea of non-joinder of all necessary parties *without* producing the original sale deed with them. After a replication denying the plea of non-joinder was filed on June 14, 1978 by the appellant, the counsel for respondents 1 and 2 read out the original sale deed in which it had been written that one Munni Devi wife of Om Prakash was also a vendee along with respondents 1 and 2, where upon the appellant moved an application on June 15, 1978, under Order I Rule 10 read with order VI Rule 17 of the Code of Civil Procedure seeking permission to amend the cause title and the pleadings. On contest, that trial court accepted the objection to the said application and dismissed the application and the suit. The first appeal before the Additional District Judge was dismissed and the second appeal before the Punjab & Haryana High Court was dismissed at the stage of admission without giving any reasons therefor.

Hence the appeal after obtaining special leave of the Court.

Allowing the appeal, the Court

HELD : 1:1. A change in section 21 of the Limitation Act, 1963, by inserting a proviso to the effect that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards him should be deemed to have been instituted on any earlier date, has been made to reduce the severity of

A the previous law and not to deprive a plaintiff of his rights against that person, if the Court is satisfied of the bonafides of the mistakes. [238 H, 239 A-B]

B 2:1. In the instant case, the omission to implead Munni Devi as a defendant was due to mistake as gleaned from the pleadings. The certified copy of the sale deed in question was obtained from the office of the sub-Registrar, and in the said copy the name of Munni Devi was not shown as a vendee at all. On the date when the suit was filed i.e. on 29th January, 1978 or till the counsel read out the original sale deed the appellant did not know by any other means that there was any other vendee in addition to respondents 1 and 2. The written statement was clearly drafted not mentioning her name. Even the original sale deed was not produced with the written statement but the contents were read out on June 14, 1978 after the replication was filed denying the plea of non-joinder of necessary parties. The fact that the appellants' father was the vendor does not lead to the presumption of his knowledge that Munni Devi was one of the vendees. In fact the appellant had nothing to gain by not impleading Munni Devi as a defendant. These circumstances lead to the only conclusion that the appellant had acted with due care and attention, within the meaning of the term "good faith" in section 2 (b) of the Limitations Act, 1963, which the courts below failed to note. (2) The suit against Munni Devi should be deemed to have been filed on the date of the institution of the suit i.e. January 29, 1978 itself, treating that as an "earlier date" referred to in the proviso to section 21 (1) of the Act, since there is no dispute that, if the suit had been filed against her also on January 29, 1978 it would have been in time and would not have suffered from the defect of non-joinder of necessary party; and because Munni Devi is a necessary party and has to be impleaded under sub-rule (2) of Rule 10 of Order I of Code of Civil Procedure to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, the amendment regarding the cause of action is unnecessary. [240 A-F]

C **CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 80 of 1983.

D Appeal by Special leave from the Judgment and order dated the 22nd January, 1982 of the Punjab & Haryana High Court in Regular Second Appeal No. 2140 of 1981.

E *L.M. Singhvi, K.B. Rohtagi, Bharat Inder Singh and H.S. Chandiok* for the Appellant.

F *A.K. Sen and Aruneshwar Gupta* for the Respondents.

The Judgment of the Court was delivered by

G **VENKATARAMIAH, J.** The simple question which arises for consideration in this case is whether the application made by the appellant for impleading an additional defendant to the suit out of which this appeal arises was in time.

The appellant filed a Suit in the court of Sub Judge, Kaithal for possession of a piece of land in exercise of his right of pre-emption against respondents 1 and 2 alleging that they had purchased the land from his father, Baburam under a registered sale deed dated May 16, 1977 in total disregard of his right of pre-emption. He stated in the plaint that the cause of action had arisen on May 16, 1977 and hence the suit filed on January 29, 1978 was in time. Alongwith the plaint he produced a certified copy of the sale deed dated May 16, 1977 and in that certified copy it had been recited that the land in question had been sold in favour of respondents 1 and 2 only. Respondents 1 and 2 appeared in the trial court and filed their written statement on May 17, 1978. One of the pleas urged by them was that since all the vendees who had purchased the land had not been impleaded and since on that account the suit had become one for partial pre-emption, it was liable to be dismissed. On June 14, 1978 the appellant filed a replication to the said written statement and in that he pleaded by way of reply to the above contention raised by respondents 1 and 2 that the said contention was untenable as all the vendees had been impleaded and that respondents 1 and 2 should disclose the names of the other vendee or vendees who according to them had not been impleaded as defendants to the suit. The above reply was filed apparently on the basis of the recitals in the certified copy of the sale deed produced by him into court. On the basis of the pleadings the trial court proceeded to frame the issues on the same date i.e. June 14, 1978. Before the issues were framed in answer to the submission made by the counsel for the appellant that there was no basis for the above plea of non-joinder of necessary parties the counsel for respondents 1 and 2 read out the original sale deed in which it had been written that one, Munni Devi, wife of Om Prakash, was also a vendee along with respondents 1 and 2. The trial court, therefore, raised an issue covering the above contention. On the very next day i.e. June 15, 1978 the appellant filed an application under rule 10 of Order I read with rule 17 of Order 6 of the Code of Civil Procedure, the relevant part of which read as follows :

"1. That the above noted case is fixed for 23.11.78.

2. That in the above noted case the defendant had taken a preliminary objection that the necessary parties have not been impleaded.

A 3. That the copy supplied to the plaintiff by the registration authorities contains the names of only two vendees who were originally impleaded by the plaintiff as defendants.

B 4. That yesterday when the issues were being framed, the defendants counsel read out from the original sale deed the names of the vendees and then it transpired that there is also a third vendee namely Smt. Munni Devi, wife of Om Prakash.

C 5. That the said lady vendee could not be impleaded as a party to the suit on account of the fact that her name was not finding place in the copy of the sale deed, which could have been the source of information to the plaintiff; and the non-impleading of the said person was in good faith and bonafide.

D 6. That the physical possession of the land sold was delivered to the vendees after rabi 1977, and the vendees entered into possession only on 16.6.77, and the limitation for the suit also started from that date.

E 7. That the impleading of the said lady and the inclusion of fact mentioned in para 6 is necessary for determining the real controversy in dispute.

It is therefore prayed that the plaintiff be allowed to amend the plaint in the following manner :-

F (a) "3. Smt. Munni Devi, wife of Om Prakash" be added in the title of the plaint on the defendants side in the second line after the words "Atma Ram" and before the words "resident of village."

G (b) The words "and from 16.6.77 when defendant vendees entered into physical possession of the land sold which was capable of physical possession" be added in the 2nd line of para 9 after "16.5.1977" and before the words "and".

H In the above application, the appellant gave the reason for impleading Munni Devi as a defendant along with respondents 1 and 2 when the suit was filed and also prayed for amendment of the plaint stating June 16, 1977 also as the date of cause of action

on which date according to him the possession of the land was delivered to the vendees. It is obvious that the above amendment was sought to save the suit from being dismissed on the ground that a necessary party had not been impleaded within the period of limitation prescribed by Article 97 of the Limitation Act, 1963 (hereinafter referred to as the Act) which reads, thus :

"Description of suit	Period of limitation	Time from which period begins to run
97. To enforce right of pre-emption whether the right is founded on law or general usage or on special contract.	One year	When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered."

That application was contested by respondents 1 and 2. They denied that possession of the land was handed over to the vendees on June 16, 1977, as alleged by the appellant. The trial court after hearing the parties dismissed the application and also the suit. The appeal filed by the appellant before the Additional District Judge, Kurukshetra against the judgment and decree of the trial court was dismissed. The second appeal filed by the appellant was also dismissed on January 22, 1982 at the stage of admission by the Punjab and Haryana High Court without giving any reasons for its decision. This appeal by special leave is filed against the judgment and order of the High Court.

On going through the records of this case, we find that the High Court, the District Judge and the trial court have not at all considered the effect of section 21 of the Act which governs this case. It reads thus :

"21. Effect of substituting or adding new plaintiff or defendant. (1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added,

A the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

B Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

C (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

D It may be noted that the provision corresponding to section 21 of the Act in the Limitation Act 36 of 1963 which was repealed and replaced by Act, was section 22 of the Limitation Act IX of 1908 which read as follows ;

E "22. Effect of substituting or adding new plaintiff or defendant. (1) Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

F (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff".

G It is clear from the foregoing that there was no provision corresponding to the proviso to sub-section (1) of section 21 of the Act in section 22 of the repealed Act. Under the former Limitation Act when after the institution of suit a new plaintiff or defendant was substituted or added, the suit as regards him was to be deemed to have been instituted when he was so made a party. The severity of the above law is sought to be reduced by the introduction of the proviso to section 21 (1) of the Act which provides that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that the suit as regards such plaintiff or defendant should be deemed to have been instituted on any earlier date. This

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change in section 21 of the Act appears to have been made so that an omission to implead a person owing to a bonafide mistake does not deprive a plaintiff of his rights against that person if the Court is satisfied in that behalf,

We shall now have to consider whether the appellant is entitled to claim the benefit of the proviso to section 21 (1) of the Act and if he is entitled to it, what is the date on which the suit against the party proposed to be newly added should be deemed to have been instituted. It is not disputed that the appellant had obtained a certified copy of the sale deed in question from the office of the Sub Registrar before the suit was filed and in that copy only respondents 1 and 2 had been shown as the vendees. Munni Devi was not shown in that copy as a vendee. The suit which was filed on January 29, 1978 was well within the period of limitation prescribed under Article 97 of the Act as against respondents 1 and 2. There is no evidence to show that on the date of the suit the appellant knew by any other means that there was any other vendee who had purchased the land along with respondents 1 and 2. In the written statement which was clearly drafted, the name of Munni Devi was not mentioned. It merely stated that all the vendees had not been impleaded as defendants. The original sale deed which was with respondents 1 and 2 was not produced in Court along with the written statement. The appellant who had looked into the certified copy of the sale deed asserted that the plea that the suit should be dismissed for non-joinder of necessary parties was untenable as all the persons who were shown as vendees in the certified copy had been impleaded. He had no reason to suspect that there was an error in the certified copy until the original sale deed was read out in the trial court by the counsel for respondents 1 and 2 on June 14, 1978. It cannot be presumed that the appellant must have known that Munni Devi was also a vendee because the vendor was his father. In fact the appellant had nothing to gain by not impleading Munni Devi also as a defendant when he filed the suit and there could be no motive for doing so. It must, therefore, be held that the omission to implead her as a defendant was due to a mistake. If such mistake is made in good faith, the proviso to section 21 (1) of the Act would be attracted. The meaning of the expression 'good faith' is explained in section 2 (h) of the Act thus :

"2. (h) "good faith—nothing shall be deemed to be done in good faith which is not done with due care and attention".

A In the instant case the appellant had obtained a certified copy of the sale deed in question and had filed the suit against respondents 1 and 2 who alone had been shown as the vendees in that copy. It has to be held that in the circumstances he had acted with due care and attention. When the original of the sale deed was read out in Court by the counsel for respondents 1 and 2, the appellant realised the mistake and filed the application on the very next date i.e. June 15, 1978 with all due diligence. Hence we are of the view that the suit against Munni Devi should be deemed to have been filed on the date of the institution of the suit i.e. January 29, 1978 itself, which on the facts and in the circumstances of the case, we consider, should be treated as the 'earlier date' referred to in the proviso to section 21 (1) of the Act. There is no dispute that if the suit had been filed against Munni Devi also on January 29, 1978 it would have been in time and would not have suffered from the defect of non-joinder of a necessary party. The bar of limitation is thus got over by the appellant. Because Munni Devi is a necessary party, she has to be impleaded under sub-rule (2) of Rule 10 of Order I of the Code of Civil Procedure to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The application filed by the appellant on June 15, 1978 is, therefore, allowed. The amendment of the plaint regarding the date of cause of action has thus become unnecessary. The judgments and decrees of the High Court, the first appellate court and the trial court have, therefore, to be set aside as they have been passed against the appellant only on the ground of non-joinder of a necessary party within time. They are accordingly set aside. The suit has now to be remanded to the trial court to dispose it of in accordance with law by recording findings on the other issues which arise for consideration in the suit. We accordingly do so. The plaint shall be permitted to be amended by the trial court by including the name of Munni Devi as a defendant before issuing summons to her.

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For the foregoing reasons, the appeal is allowed. No costs.

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S.R.

Appeal allowed.