LETTERS PATENT APPEAL

Before A. N. Grover and H. R. Khanna, JJ.

MUNSHA SINGH AND OTHERS,—*Appellants.*

versus

GURDIT SINGH AND OTHERS,—*Respondents.*

L. P. A. No. 23 of 1960.

1964

July, 29th.

Limitation Act (IX of 1908)—Earlier suit dismissed as premature—Time spent in prosecuting that suit and appeals arising therefrom—Whether can be excluded from computation for determining if second suit is within time.

Held, that the words "or other cause of a like nature" in section 14(1) of the Indian Limitation Act, 1908, have to be read *ejusdem generis* with the words "defects of jurisdiction" and due significance is to be attached to the words "is unable to entertain it". If a suit is dismissed on the ground that it is premature, it cannot be said that the court is unable to entertain it on the ground of defect of jurisdiction, etc., when it is perfectly competent to entertain it but for some reason or the other cannot or does not grant relief. The time spent in prosecuting such a suit and the appeals arising therefrom cannot be excluded under section 14(1) of the Indian Limitation Act, 1908, while determining whether the second suit is within time or not.

Letters Patent Appeal under clause 10 of the Letters Patent from the judgment of the Hon'ble Mr. Justice Shamsher Bahadur, dated the 28th day of October, 1959, passed in R.S.A. No. 967 of 1954, reversing that of Shri J. N. Kapur, District Judge, Hoshiarpur, dated the 12th July, 1954, who affirmed the decree of Shri Harbans Singh, Subordinate Judge, 3rd Class, Hoshiarpur, dated teh 31st March, 1954, dismissing the plaintiffs suit and decreeing the plaintiff's suit and leaving the parties to bear their own costs.

H. R. SODHI AND PARMESHWAR LALL, ADVOCATES, for the Appellants.

M. L. SETHI AND R. S. AMOL, ADVOCATES, for the Respondents.

JUDGMENT

GROVER, J.—These three appeals (Letters Patent Appeals Nos. 23 of 1960, 24 of 1960 and 25 of 1960), which are interconnected, filed under clause 10 of the Letters Patent, are directed against a judgment of a learned Single Judge who has decreed the suits of the plaintiffs to the extent indicated in his judgment in reversal of the decree of dismissal of the Courts below. Grover, J.

The necessary pedigree-table is to be found in the judgment of the learned Single Judge and need not be set out again. The undisputed facts are that on 20th June, 1885, Chuhar Singh, who was a descendant of Amrika, son of Har Lal, sold 167 *kanals* odd of agricultural land for a sum of Rs. 2,378 to Bhagwan Singh. One Hamira, a collateral of Chuhar Singh, brought a suit for possession by pre-emption in respect of 52 *kanals* 13 *marlas*, which was decreed on 29th April, 1889, on payment of Rs. 671. The remainder of the land measuring 114 *kanals* 17 *marlas* was mutated in favour of Bhagwan Singh on 4th May, 1890. Hamira sold back the land, the possession of which he had taken by pre-emption, to Bhagwan Singh on 20th September, 1890. The result was that Bhagwan Singh remained the owner of the entire land which had been sold to him. Chuhar Singh died in 1896. In 1898, Jawahar Singh and Bela Singh, who were descendants of the line of Bharmian, another son of Har Lal, filed a suit in the year 1898 for a declaration that the sale by Chuhar Singh in favour of Bhagwan Singh would not affect their reversionary rights as the property was ancestral and the sale was without consideration and necessity. On 29th July, 1902, this suit was finally decided by the Punjab Chief Court in appeal, the decision being that the sale was good up to the extent of Rs. 1,611. It was, however, directed that on the death of Alla

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Singh, adopted son of Chuhar Singh, and the extinction of his line, the plaintiffs or their successors-in-interest could take possession of the land on payment of the consideration money to the vendee or his successors-in-interest. On the death of Alla Singh, Kishan Singh succeeded him. On 18th December, 1945, Jawahar Singh and Bela Singh instituted a suit for possession of the aforesaid land on the allegation that Kishan Singh had died on 15th August, 1945, and the line of Alla Singh had become extinct. Two more suits were filed by the other collaterals, one by Waryam Singh and his three brothers claiming one-half share in the entire holding and the other by Khazan Singh and Jagat Singh who claimed one-fourth share. The trial Court decreed two of the suits but dismissed the suit of Khazan Singh and Jagat Singh on the ground that the successors-in-interest of Hamira were estopped from claiming possession. On appeal, the District Judge held on 17th August, 1948, that it had not been proved that Kishan Singh had died on 15th August, 1945. The suits were ordered to be dismissed in the following words:—

> "In view of my finding to the effect that Kishan Singh had not died, all the three suits would be premature and must be dismissed as such."

The appeals were taken to the High Court against the dismissal of the suits and the concluding portion of the judgment of Harnam Singh, J., who disposed them of on 3rd August, 1951, is—

> "That being the situation of matters, I have no doubt that the lower appellate Court was right in finding that the plaintiffs in the three cases had failed to prove the death of Kishan Singh. If so, the plaintiffs were not entitled to the possession of the land in suit and the suits have been rightly dismissed as premature."

Soon after the decision of the High Court, three suits were once again filed by the three sets of the plaintiffs. The first suit was instituted by Waryam Singh and others on 28th October, 1952, claiming possession of one-half share in the land in dispute. This was followed by the suit of Jawahar Singh and Bela Singh instituted on 16th December, 1952, in respect of one-fourth share. Khazan Singh and Jagat Singh filed a similar suit on 12th May, 1953, with regard to one-fourth share. All these suits were consolidated and tried together. The main plea taken in these suits by the plaintiffs was that Kishan Singh had not been heard of since 15th August, 1945, and his death should be presumed under section 108 of the Indian Evidence Act, 1872. It was claimed that the suits were within time and it appears that the benefit of section 14 of the Indian Limitation Act, 1908, was also invoked. A number of pleas were raised by the defendants who are successors-in-interest of Bhagwan Singh, the original vendee, but the main plea, however, which has assumed importance now, was that the suits were barred by time. The trial Court found that Kishan Singh had not been heard of for more than seven years and should therefore, be presumed to be civilly dead, holding that although after the lapse of 7 years when a person was last heard of he should be presumed to be dead but the date of death had to be proved like any other relevant fact. Since the date of death had not been proved, the suit was barred by time. It may be mentioned that the period of limitation prescribed for filing such a suit is three years under the relevant provisions of the Punjab Limitation (Custom) Act, 1920, from the date on which the right to sue accrues or the date on which the declaratory decree is obtained whichever is later. All the three suits were dismissed by the trial Court principally on the ground of the bar of limitation. On appeal, the learned

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District Judge upheld the findings of the trial Court except for one matter. According to him, Hamira having successfully brought a suit for pre-emption precluded himself and his successors from claiming possession of that property. In his view, Jagat Singh and Khazan Singh could not claim any share in the land of Chuhar Singh which was to be divided equally between Waryam Singh and his brothers (one-half share) and Jawahar Singh and Bela Singh (the other half share) if the suits were to be decreed but as he agreed with the conclusion of the trial Court that the suits were bared by time, no question of granting any relief to the plaintiffs arose.

The learned Single Judge has held that till 3rd August, 1951, when the judgment of this Court was delivered in the previous suits which had been filed in the year 1945, the death of Kishan Singh had not been established. The present suits were brought between 28th October, 1952, and 12th May, 1953. The plaintiffs should be given allowance for the period which they spent in the previous litigation. namely, from 1945 to 1951, under section 14(1) of the Limitation Act. In this manner the suits could not have been dismissed as barred by time. Another matter raised before him related to the question of abatement in Waryam Singh's appeal. Surain Singh, one of the appellants in Regular Second Appeal No. 976 of 1954, had died and his legal representatives had not been brought on the record. It was not controverted before the learned Judge that if there was any abatement, it could only be with regard to Surain Singh's interest. Surain Singh had been succeeded by persons who were minors and in these circumstances the learned Judge considered that the delay of a few weeks to bring the legal representatives on the record ought to be condoned. He allowed the appeals of the plaintiffs and decreed the suit of Jagat Singh and Khazan Singh with regard to the one-fourth share of the land. Jawahar Singh and Bela

Singh were granted a similar decree. Waryam Singh and others were granted a decree for one-half share of the land.

The main contention raised by Mr. Hans Raj Sodhi, counsel for the defendant-appellants, relates to the question of limitation on which the suits had been dismissed by the first two Courts. According to Mr. Sodhi, it is well settled that section 108 Evidence Act only raised the presumption regarding death which must be proved by other evidence The onus of proving that death took place at any particular time lies upon the persons who claims a right to the establishment of which that fact is essential,—*vide Mst. Harnam Kaur* v. *Ratna* (1). In that case while dealing with the claim of the plaintiff to the share of one Karam Singh, it was observed by the Bench that the onus lay upon him to prove that Karam Singh had died after Dipa but during the lifetime of Chanda, with the result that Chanda succeeded to him and he being the collateral of Chanda had the right to succeed to that land in preference to Mst. Harnam Kaur. In this he had signnally failed. Mr. Sodhi says that in order to bring the suits within time the plaintiffs were bound to prove the date of death of Kishan Singh within three years of the institution of the suits. As they had failed to do so and the only finding given by the Courts below was based on section 108 of the Evidence Act, the suits were rightly dismissed as barred by time and no question arose of any benefit being given of section 14(1) of the Limitation Act. It is further contended that the provisions of section 14(1) of the Limitation Act did not apply to the facts of the present cases. That section is in the following terms:—

"(1) In computing the period of limitation prescribed for any suit, the time during

(1) A.I.R. 1949 E. P. 267.

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which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceedng is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

It is pointed out that the previous litigation which commenced in 1945, and ended in 1951, was not being prosecuted in a Court, which from defect of jurisdiction or other cause of a like nature, was unable to entertain it.

In my opinion, the learned Single Judge was in error in excluding the time taken by the first litigation by applying section 14(1) to the cases of all the plaintiffs in the three suits. He relied on a Bench decision of the Bombay High Court in *Sheth Maneklal Kalidas* v. *Luvar Shivlal Dayaram* (2). In that case it was held that the words "defect of a like nature" in section 14 of the Limitation Act meant and connoted something quite distinct from defect of jurisdiction. It was also laid down that the provisions of section 14 must be liberally construed and should be applied to a case where the plaintiff was prosecuting in good faith another civil proceeding against the same defendant founded on the same cause of action which was disallowed as premature and in computing the period of limitation the time taken up in such proceeding would be excluded. The entire facts are not given in the report but the contention which was raised before the Bombay Court, was that when the appellant applied for a personal decree after 4th January, 1930, when the cause of action accrued, he instituted a civil proceeding

(2) I.L.R. 1939 Bom. 9.

and he prosecuted it *bona fide* and that proceeding failed because it was held that the cause of action against the respondent had not accrued and, therefore, the suit against him under the *chitti* was premature. The Bombay Bench relied on the observations of the Privy Council in *Hem Chunder Chowdhry* v. *Kali Prosunno Bhaduri* (3), which are extracted in the judgment of the learned Single Judge. There was no discussion, however, in the Privy Council case about the scope of section 14(1) and the Bombay High Court proceeded to rest its judgment in the aforesaid case on another principle also, covered by another decision of the Privy Council with which we are not concerned. It appears that the attention of the learned Single Judge was not invited to a decision of a Full Bench consisting of Harries, C.J., Abdur Rahman, J., and Mahajan, J., (as he then was) of the Lahore High Court in *Bhai Jai Kishen Singh* v. *Peoples Bank of Northern India* (4). The question which the Full Bench was invited to answer was whether the period spent by a creditor in prosecuting a petition for his debtor's adjudication as an insolvent could be excluded under section 14 of the Limitation Act in computing the limitation prescribed for an execution application when the petition for insolvency was dismissed on the ground that the act of insolvency alleged to have been committed by his debtor did not fall within section 6 of the Provincial Insolvency Act. Abdur Rehman, J., who delivered the judgment of the Full Bench, examined the matter from all aspects. Dealing with the scope and ambit of the words "defect of jurisdiction or other cause of a like nature" used in sub-section (1) and (2) of section 14 of the Limitation Act the learned Judge observed:—

> "The words 'or other cause of a like nature', however, liberally construed, must be

(3) I.L.R. 30 Cal. 1033.
(4) A.I.R. 1944 Lah. 136.

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read so as to convey something *ejusdem generis* or analogous with the preceding words relating to the defect of jurisdiction. If these words are read along with the expression 'is unable to entertain', they would denote that the defect must be of such a character as to make it impossible for a Court to entertain the suit or application either in its inception or at all events as to prevent it from deciding it on its merits."

He found it difficult to give an exhaustive list of defects that these words might be taken to cover. Illustrations furnished by decided cases were (i) if a suit had failed because it was brought without proper leave, (ii) if it had failed because no notice under section 80, Civil Procedure Code, had been given, (iii) where it would fail for non-production of the Collector's certificate required by section 7, Pensions Act, and (iv) if a plaintiff or a petitioner failed to establish a cause of action in himself. The learned Judge proceeded to say—

"The fact of the matter is that if on the facts the relief asked for by a plaintiff or a petitioner is found by the Courts to have been misconceived either because it is not warranted by the facts mentioned by them or because the facts stated in the plaint or the petition do not disclose a good and complete cause of action and the plaint or petition are consequently dismissed or rejected, the provisions contained in S. 14, Limitation Act, could not be of any help."

If the words "or other caues of a like nature" have to be read *ejusdem generis* with the words "defect of jurisdiction" and if due significance is to be attached

to the words "is unable to entertain it" under section 14(1), it is not possible to see how the benefit of that provision could be given to the plaintiffs in the suits which have been decreed by the learned Single Judge. In the previous litigation, which concluded in 1951, there had been an investigation not only on one of the main points in controversy between the parties but also the Court could not be regarded as having been unable to entertain the suits from defect of jurisdiction or other cause of a like nature. It is true that the decision rested on the ground that since Kishan Singh had not been proved to have died the suits were premature, but according to the principles which have been enunciated by the Lahore Full Bench in *Bhai Jai Kishan Singh's case* with regard to the scope and ambit of the material words in section 14(1), even if the plaints in the three suits had been rejected in the very beginning by the Court on the ground that they did not disclose any cause of action, the provision of section 14(1) would not have been attracted. It is difficult to hold that they would be applicable when the Court, after a trial of the suits, came to the conclusion that the cause of action had not yet arisen. It has not been argued not could it be legitimately argued that the Court was debarred by any statutory provision or otherwise or by the requirement of fulfilment of a condition precedent from entertaining the suits. All that it did was to decline to grant relief on the ground that the suits were premature. I fail to understand how it can be said that a Court is unable to entertain a suit on the ground of defect of jurisdiction, etc., when it is perfectly competent to entertain it but for some reason or the other cannot or does not grant relief. In this view of the matter, the period taken by the previous litigation could not be excluded under section 14(1) of the Limitation Act.

Mr. M. L. Sethi has not been able to successfully assail the correctness of the view expressed by the

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Lahore Full Bench. He has relied on the Bombay decision as also the observations of a Privy Council to which reference has been made but as has already been pointed out, Their Lordships of the Privy Council did not have occasion to deal with the ambit and scope of the words in question and the Bombay judgment does not take notice of a number of reasons which came to find expression in the decision of the Lahore Full Bench which, with respect, must be taken as laying down the law correctly.

Mr. M. L. Sethi has not contended that if the period from 1945 to 1951 is not excluded under section 14(1) of the Limitation Act, the suits would be within time. Since the suits were barred by time, they were rightly dismissed by the first two Courts. It is thus unnecessary to decide the question of abatement of Waryam Singh's appeal which was agitated before the learned Single Judge and the delay in which was condoned by him.

For the reasons given above, all the three appeals are allowed and the decision of the learned Single Judge is reversed, with the result that the suits shall stand dismissed. In view of all the circumstances, the parties are left to bear their own costs.

H. R. KHANNA, J.—I agree.

B.R.T.

LETTERS PATENT APPEALS

Before A. N. Grover and H. R. Khanna, JJ.

SHRI AMIR SINGH,—*Appellant.*

versus

THE GOVERNMENT OF INDIA AND OTHERS,—*Respondents.*

L.P.A. No. 364 of 1963

1964

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Sea Custom Act (VIII of 1878)—Section 182—Procedure under—Whether judicial—Arguments heard by one Collector and decision given by his successor—Procedure whether violative of principles of natural justice—Personal hearing—Object of.