

The State of Punjab, etc. v. Ujagar Singh, etc. (Pandit, J.)

APPELLATE CIVIL

Before Prem Chand Pandit, J.

THE STATE OF PUNJAB AND OTHERS,—*Appellants*

*versus*

UJAGAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1049 of 1958

August 8, 1966

*Limitation Act (IX of 1908)—Arts. 14 and 120—Suit for permanent injunction restraining the State of Punjab from recovering the amount in pursuance of the order passed by Divisional Canal Officer under S. 33, Northern India Canal and Drainage Act (VIII of 1873)—Whether governed by Art. 14 or Art. 120.*

*Held*, that Article 14 of the Indian Limitation Act, 1908, prescribes a limitation of one year to set aside an order of an officer of the Government in his official capacity and this limitation commences from the date of the said order. The amount was being recovered from the plaintiffs by the canal authorities on the basis of the order passed by the Divisional Canal Officer. It is undisputed that the plaintiffs could not get the relief asked for by them unless that order was set aside. The mere fact that they had framed the suit in a different manner, namely, for a permanent injunction, would not take the case out of the operation of this Article. The order of the canal officer is not void merely because notice to some of the plaintiffs had not been issued before the order was passed. If an officer, who admittedly had jurisdiction to decide a matter, had failed to comply with a certain formality prescribed under the rules in arriving at a decision, the same could not be held to be without jurisdiction or a nullity. It can at the most be termed as an erroneous order in law. It is undisputed that officers, who have jurisdiction to adjudicate on certain matters, can decide rightly as well as wrongly, but it cannot be said in their case that their orders are without jurisdiction, if they have, in deciding those matters, in some manner infringed any rule. That being so, Article 14 applied to the present case and since the suit was admittedly instituted beyond one year from the date of the order and even from the order of the appellate authority, it was clearly barred by limitation.

*Regular Second Appeal from the decree of the Court of Shri Sant Ram Garg, District Judge, Sangrur, dated the 7th day of July, 1958, modifying that of Shri Kashmir Singh Sidhu, Sub-Judge, 2nd Class (A), Sangrur, dated the 12th November, 1957 (dismissing the plaintiff's suit and leaving the parties to bear their own costs) to the extent of setting aside the decree of the trial Court so far*

*as the plaintiff appellants (other than Arjan Singh, son of Sadhu Singh, Jhanda Singh, son of Nand Singh, Deva Singh, son of Rattan Singh, Sampuran Singh, son of Santokh Singh, Gurnam Singh, son of Rattan Singh, Gajjan Singh, son of Lehna Singh and Sadhu Singh, son of Ishar Singh) were concerned and affirming the rest of the decree passed by the trial Court and further ordering that the appeal of the remaining plaintiff's-appellants would stand dismissed and leaving the parties to bear their own costs throughout.*

K. C. SUD, ADVOCATE, for the Appellants.

J. V. GUPTA AND M. R. AGNIHOTRI, ADVOCATES, for the Respondents.

#### JUDGMENT

PANDIT J.—The facts giving rise to this second appeal are as follows:—

A few days before 17th of October, 1952, a breach occurred in outlet No. 6, R.D. 7193 in the *rajbaha* Sangrur. This breach was discovered on 17th of October, 1952, by the canal authorities. The Zilledar made enquiries from the persons whose lands were irrigated from this outlet as to who had made the said breach. In spite of his best efforts, he could not find out the name of the person or persons who was or were guilty of this conduct. He accordingly measured the fields which he found to have been irrigated from the breach and then reported the matter to the higher authorities. The canal authorities then ordered Ujagar Singh and others, who had irrigated their fields with the unauthorised use of water from this outlet, to pay the penalty at a special rate equal to six times the highest water rate prescribed for that crop. This order was passed by the Divisional Canal Officer on 2nd of March, 1954, under section 33 of the Northern India Canal and Drainage Act read with rule 33 of the Rules framed under section 75 of the Act. The total amount assessed against those persons came to Rs. 3,123-15 annas. Aggrieved by that order, they went in appeal before the Commissioner, Patiala, but the same was dismissed by him on 21st of September, 1954, on the ground that it was barred by limitation. Thereafter on 16th of November, 1956, Ujagar Singh and others brought a civil suit out of which the present appeal has arisen, for a permanent injunction restraining the State of Punjab from recovering this amount from them. According to them, the breach in the *rajbaha* was effected by Mangal Singh and his tenant Natha Singh whose land alone was benefited by the same, and their names had been disclosed by the plaintiffs at the time when the enquiry into this matter was being made by the

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canal authorities. It was also alleged that their fields were situate at a higher level and the water from his breach could not have reached there. The penalty had been imposed on them without affording them an opportunity of being heard. The suit was resisted by the Punjab State and the pleadings of the parties gave rise to five issues. The trial Court dismissed the suit, while the learned District Judge, Sangrur, to whom the matter had gone in appeal, partly accepted the same and held that those persons to whom no notice had been issued by the canal authorities could not be asked to pay the penalty, because the order of the Divisional Canal Officer so far as they were concerned was without jurisdiction and a nullity. The Punjab State has come in appeal against this order praying that the suit of all the plaintiffs should have been dismissed by the lower appellate Court.

After hearing the counsel for the parties, I am of the view that this appeal should be accepted on the short ground that the suit of the plaintiffs was barred by limitation under Article 14 of the Indian Limitation Act, 1908. The trial Judge was of the opinion that the present suit was to set aside the order of the Divisional Canal Officer, whereby he had directed that Rs. 3,123-15 annas be recovered from the plaintiffs as special rate assessed by him. As such it was governed by Article 14 of the Limitation Act and should have been brought within one year of the date of the order. The said order was admittedly passed on 2nd March, 1954, and the suit having been filed in November, 1956, was clearly barred by limitation. He repelled the contention of the learned counsel for the plaintiffs that the said order was null and void and did not require to be set aside by the plaintiffs in order to obtain the relief asked for. This finding was reversed by the learned District Judge who came to the conclusion that the order of the Divisional Canal Officer was null and void *qua* those plaintiffs who had not been served with a notice by him, before determining their liability. According to him, Article 14 had no application to their case, which would be governed by Article 120 under which he suit was within limitation.

Article 14 prescribes a limitation of one year to set aside an order of an officer of the Government in his official capacity and this limitation commences from the date of the said order. The amount was being recovered from the plaintiffs by the canal authorities on the basis of the order passed by the Divisional Canal Officer. It is undisputed that the plaintiffs could not get the relief asked for by

them, unless that order was set aside. The mere fact that they had framed the suit in a different manner, namely, for a permanent injunction, would not take the case out of the operation of this Article. It is conceded by the learned counsel for the plaintiffs that the Divisional Canal Officer had jurisdiction to pass such an order under section 33 of the Northern India Canal and Drainage Act read with rule 33 of the rules framed under the Act. His submission, however, was that this order was a nullity inasmuch as the Divisional Canal Officer, while passing this order, had not issued any notice to some of the plaintiffs and such a notice was necessary under the rules. According to him, the absence of this notice had made the order passed by the Divisional Canal Officer a void one. In the first place, he has not been able to point out the exact provisions of the Act and the rules under which a notice was necessary to be issued to the plaintiffs before the Divisional Canal Officer could take action under section 33 under which this order was passed. Secondly if an officer who admittedly had jurisdiction to decide a matter, had failed to comply with a certain formality prescribed under the rules in arriving at a decision, the same could not be held to be without jurisdiction or a nullity. It can at the most be termed as an erroneous order in law. It is undisputed that officers, who have jurisdiction to adjudicate on certain matters, can decide rightly as well as wrongly, but it cannot be said in their case that their orders are without jurisdiction, if they have, in deciding those matters, in some manner infringed any rule. Learned counsel for the plaintiffs could not point out as to how the order passed by the Divisional Canal Officer, in the instant case, was a nullity or without jurisdiction. That being so, Article 14 applied to the present case and since the suit was admittedly instituted beyond one year from the date of the order and even from the order of the appellate authority, it was clearly barred by limitation.

The result is that this appeal is accepted, the judgment and decree of the learned District Judge are reversed and those of the trial Court, restored. In the circumstances of this case, however, the parties are left to bear their own costs in this Court also.

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B.R.T.