APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice.

1952
July 31

GOPAL RAGHUNATH KETKAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2 AND 6), PETITIONERS *v.* GOVIND PANDURANG CHACHAD AND OTHERS, (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 3, 4 AND 5), OPPONENTS.*

Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), s. 56 (1)—Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 15D—Suit for accounts filed under latter Act on May 27, 1950—Maintainability of suit—Use of expression "with effect from"—Indication of Legislature's intention to fix starting point—Bombay General Clauses Act (Bom. I of 1904), s. 10 (1).

The Dekkhan Agriculturists' Relief Act, 1879, which had lapsed on the repeal of the Bombay Agricultural Debtors Relief Act, 1939, was by s. 56 (*1*) of the Bombay Agricultural Debtors Relief Act, 1947, re-enacted "with effect from the date of the coming into operation of" the latter Act, i. e. from May 27, 1947, and was to continue in force for a period of three years from that date. In a suit filed on May 27, 1950, under the Dekkhan Agriculturists' Relief Act, 1879, the question arose as to whether it was maintainable. The lower Court held that by reason of s. 10 (*1*) of the Bombay General Clauses Act, 1904, the period of three years was to commence on May 28, 1947, and, therefore, the Dekkhan Agriculturists' Relief Act was in force on the date on which the suit was filed. In revision:

Held, that by using the expression "with effect from" instead of the word "from" in s. 56 (*1*) of the Bombay Agricultural Debtors Relief Act, 1947, the Legislature had indicated its intention that the Dekkhan Agriculturists' Relief Act was to be re-enacted from the date which it itself had mentioned, viz., May 27, 1947, with the result that that Act was not in force on May 27, 1950, and the suit as filed was not maintainable.

The two parts of s. 10 (*1*) of the Bombay General Clauses Act, 1904, are independent; it is not as if the section applies only when the Legislature has used both the expressions "from" and "to".

CIVIL REVISION APPLICATION against the decision of S. N. Pathak, Civil Judge, Junior Division at Pen, district Kolaba.

On May 27, 1950, Govind (plaintiff) filed a suit in the Court of the Civil Judge (J. D.) at Pen for a declaration that a transaction, dated January 20, 1938, which was a sale for a consideration of Rs. 4,500, was in reality a mortgage and for accounts under s. 15-D of the Dekkhan Agriculturists' Relief Act, 1879.

* Civil Revision Application No. 548 of 1952.

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The defendants *inter alia* contended that the Dekkhan Agriculturists' Relief Act was not in force on May 27, 1950 and, therefore, the suit was not maintainable.

The trial Court framed a preliminary issue as to whether the suit as filed was tenable and found affirmatively on it by obsering as follows:—

"...It is significant to note that in s. 56 of the B. A. D. R. Act the word 'from' is used to show the commencement of the re-enacted D. A. R. Act. The D. A. R. Act was to remain in force for 3 years from the date of the coming into operation of the B. A. D. R. Act. Hence, if reliance is placed on s. 10 of the Bombay General Clauses Act it is quite *clear* that the 3 years period would end on May 27, 1950 up to which the re-enacted D. A. R. Act should be deemed in force. The defendant's Pleader wants to rely on the ruling in *Ramchandra Narayan Kulkarni* v. *Jijaba Rangnath Jadhav*, 51 Bom. L. R. 605. But in that case the question of applicability of s. 11 of the Bombay General Clauses Act was considered and the present case can be distinguished from that ruling on the ground that the question as to on what date the three years' period came to an end was not directly decided in that case. Consequently the above quoted ruling is not of any help to the defendant. While computing the period of three years from May 27, 1947 the first day will have to be excluded and the last day, i. e., May 27, 1950 will have to be included during which period it can be said that the D. A. R. Act was in force and hence, the plaintiff's suit which was filed on 27th May, 1950 under the D. A. R. Act is tenable. Consequently I answer issue No. 1 in the affirmative.

Defendants Nos. 1, 2 and 6 applied revision to the High Court.

M. G. Chitale, for the petitioners.

V. M. Limaye, for opponent No. 1.

CHAGLA C. J. An interesting question arises in this revision application as to whether the Dekkhan Agriculturists' Relief Act was in force on May 27, 1950 when the first opponent filed a suit under the D. A. R. Act.

Now, in order to properly construe s. 56 it is necessary to have the background of the previous legislation. Under the Bombay Agricultural Debtors' Relief Act, 1939, it was provided by s. 85 that the D. A. R. Act should cease to have force in such areas where the Board was established on the date when the Board was so established, but s. 86 of the Act kept the D. A. R. Act in force for special purposes for three years from the date of the establishment of the Board. In this particular area with which we are dealing the Board was established on May 1, 1945. Therefore, under s. 85 the D. A. R. Act would cease to have force, but by

reason of s. 86 it would continue to be in force up to April 31, 1948. Then the old D. A. R. Act was repealed and the new Act came into force on May 27, 1947, and the result of the repeal of the old Act was or would have been that the D. A. R. Act would no longer have been in force as provided in s. 86 of the old Act. Therefore, in this particular case on May 27, 1947, the D. A. R. Act would not have been in force for the purpose of s. 86 of the old Act as on that date the new Act came into force. In order to get over that difficulty an amending Act was passed in 1948 which was Act LXX of 1948 and by that amendment s. 56 (*1*) was made to run as follows:

> "Notwithstanding the repeal of the Dekkhan Agriculturists' Relief Act by the B. A. D. R. Act of 1939, the first mentioned Act shall, in so far as it applies to transactions and proceedings to which this Act does not apply, be deemed to have been re-enacted with effect from the date of the coming into operation of this Act and shall continue to be in force for a period of three years from the said date."

Therefore, the Legislature, feeling that the D. A. R. Act ceased to be in force after 1947, made good that lacuna in the legislation by the amending Act of 1948 and retrospectively re-enacted the D. A. R. Act from May 27, 1947. In other words, by reason of this amendment there was to be no break whatever in the continuance of the D. A. R. Act.

Now, let us see what is the language used by the Legislature and what effect should be given to that language, because if the language is clear then I agree with Mr. Limaye that whatever the legislative background may be the intention of the Legislature can only be gathered by the words used. The material words which call for construction at my hands are " re-enacted with effect from the date of the coming into operation of this Act", and the contention of Mr. Limaye is that in construing this expression I must exclude May 27, 1947, the date on which the new Act came into force, and calculate the three years from May 28, 1947, in which case the suit as filed on the May 27, 1950 would be in time. On the other hand, Mr. Chitale's contention is that May 27, 1947, should not be excluded in calculating the period of three years and if May 27, 1947 is included then the period expired on the midnight of May 26, 1950, and the suit filed is out of time. Section 10 of the Bombay General Clauses Act provides that in any Bombay Act made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the

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purpose of including the last in a series of days or any other period of time, to use the word "to". Mr. Chitale says that this section only applies when the Legislature has used both the expressions "from" and "to". I am not prepared to accept that contention. The two parts of s. 10 (*1*) are independent and the Legislature has laid down how "from" is to be interpreted when used in a certain context and how "to" is to be interpreted when used in a certain context. Therefore, if you have a series of days or a period of time mentioned after the word "from", the first day has got to be excluded. That is clear from s. 10 (*1*) and this is what is most strongly relied upon by Mr. Limaye. Mr. Limaye says, here you have a period of time mentioned, three years, you have the date mentioned, viz., May 27, 1947, and therefore, applying s. 10 (*1*) of the General Clauses Act, you must exclude May 27, 1947, in which case the three years commenced from May 28, and not from May 27. It is clear that s. 10 (*1*) applies when the Legislature intends to exclude the first day from a series of days or the period of time used for a particular purpose. Instead of making it clear in every legislation it is sufficient for the Legislature to use the word "from". In my opinion, the Legislature has made it amply clear in s. 56 (*1*) that it has not used the word "from" in the sense in which it is indicated in s. 10 (*1*) of the General Clauses Act because the language used is not " from the date of the coming into operation of the Act", but the language is "with effect from the date of the coming into operation of the Act." In my opinion, the expression "with effect" are the key words to this sub-section and they give a clear indication of the intention of the Legislature. A certain Act is being re-enacted with retrospective effect and the Legislature wants to give validity to that re-enactment and, therefore, the Legislature says that the D. A. R. Act will be valid from the date which it itself has mentioned, viz., the date of the coming into operation of the Act, and, therefore, the Legislature says that the D. A. R. Act is re-enacted with effect form that date. Whatever force Mr. Limaye's contention might have had if the words "with effect" did not appear in the sub-section, their presence in that sub-section to my mind is conclusive as to the intention of the Legislature, and this interpretation receives further support and further emphasis from the legislative history of this legislation to which I have drawn attention. It is impossible to believe that the Legislature intended that the D. A. R. Act should not be in force on one

solitary day, viz., May 27, 1947, because till May 26, 1947, it was in force by virtue of the old Act. On May 27, 1947, the old Act was repealed and the new Act came into force. By the amendment, according to Mr. Limaye, the D. A. R. Act was re-enacted as from May 28, 1947. The result would be that you will have one, as it were, *dies non* on which the D. A. R. Act would not be in force. I do not think that would be a proper interpretation to put upon this section. Mr. Limaye says that the Legislature has again used the expression "from" in the latter part of this sub-section when it says, "and shall continue in force for a period of three years from the said date." But I cannot overlook the fact that the expression "with effect" is used in the earlier part of the sub-section and the meaning to be given to the expression "with effect" in the earlier part of the sub-section must be the meaning which must be given to the expression "from" in the latter part of s. 56 (*1*). Therefore, in my opinion,the learned Judge was in error in coming to the conclusion that the D. A. R. Act was in force on May 27, 1950. The result is that the right of the plaintiff to maintain a suit under the D. A. R. Act no longer existed on May 27, 1950. Therefore, the suit as filed is not maintainable.

Result is that the order of the learned Judge will be set aside and the suit will be dismissed with costs. Rule absolute with costs.

Rule absolute.

M. W. P.

APPEAL FROM TESTAMENTARY AND INTESTATE JURISDICTION

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

PANDURANG GANPATRAO RAUT AND OTHERS, (ORIGINAL DEFENDANTS) APPELLANTS *v.* THE ADMINISTRATOR OF BOMBAY (ORIGINAL PLAINTIFFS) RESPONDENTS.*

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Hindu law—Inheritance and Succession—Illegitimate daughter—Mother's collaterals—Whether mother's collaterals entitled to succeed to illegitimate daughter.

Under Hindu law collaterals of the mother are not entitled to succeed to her illegitimate daughters.

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* T. & I. J. Appeal No. 12 of 1952; T. & I. J. Suit No. 12 of 1950.