SANKAR DASTIDAR

v.

SHRIMATI BANJULA DASTIDAR AND ANR.

DECEMBER 5, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Limitation Act, 1963—Article 91— Wrongful detention of belongings —Claim of damages five years after alleged detention—Held, Is barred by time.

Respondent no.1 filed a suit for declaration of title against her brother, appellant in regard to their residential house. On 16.3.1983, appellant locked the room where almirah containing goods belonging to Respondent no.1 was kept. Advocate commissioner made an inventory of the goods. Thereafter appellant also filed a suit. On 24.6.1992, Respondent no.1 made a counter claim of damages to the tune of Rs.50,000/- for wrongful detention of her belongings including garments and personal effects and for Rs. 88,000/- on allegation that validity of a National Saving Certificate could not be renewed and, thus, she had suffered a loss. Appellant withdrew the suit. However, the counter claim, was treated to be a suit. It was decreed. On appeal, before High Court, question that the counter claim was barred by limitation was answered in negative. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. Article 91 of the Limitation Act provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful. [104-C-D]

1.2. The possession over the entire property was taken on 16.03.1987 when the appellant had put a lock in the room. The counter claim was filed by Respondent No. 1 on 24.06.1992, i.e., five years after the alleged

detention. In the peculiar facts and circumstances of a case of this nature, if Article 91 of the Limitation Act would not apply, the residuary provision would. The fact that the appellant had locked the room where the almirah containing the goods belonging to Respondent No. 1 was stored was known to Respondent No. 1 on 16.03.1987. She knew thereabout. If she had to claim damages for that act on the part of the appellant, she should have filed a suit within a period of three years from the said date. Furthermore, Respondent No. 1 knew about the purported alleged wrongful act on the part of the appellant. She filed an application in the nature of *pro intersse suo* in the earlier suit. The same was rejected. Her cause of action was different and distinct from that of her brother. One *lis* was in relation to the declaration of title as also possession, another one was in respect of damages for wrongful detention of specific movable properties. Only because in another legal proceedings by and between the appellant and Respondent No. 2, an Advocate Commissioner was appointed and inventory of the goods of the said room was prepared, the same would not give rise to a fresh cause of action for laying a claim for damages. The matter might have been different if a suit for possession of the goods had been filed.

Sarat Chandra Mukherjee **v.** *Nerode Chandra Mukherjee and Ors.*, **AIR (1935) Calcutta 405, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5609 of 2006.

From the final Judgment and Order dated 19.1.2005 of the High Court of Calcutta in F.A. No. 71 of 2002.

Pranab Kumar Mullick and S.K. Pattanaik for the Appellant.

D. Bera and Sarla Chandra for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

What would be the period of limitation for raising a counter claim in respect of wrongful detention of goods is the question involved in this appeal which arises out of a judgment and order dated 19.01.2005 passed by the High Court of Calcutta in F.A. No. 71 of 2002.

Appellant and late Kamakshya Kumar, husband of Dipti Dasgupta Respondent No. 2 herein are brothers. Banjula Dastidar, Respondent No. 1

herein is their sister. They had one more sister Bulbul Dastidar (who died in November, 1987). A suit was filed by Respondent No. 1 against the appellant *inter alia* for declaration of title in regard to their residential house situate at P-824, New Alipore, Kolkata. Allegedly, the appellant had put a lock, in a room where Respondent No. 1 Banjula used to stay, on 16.03.1987. An inventory was made in the said suit by appointing an Advocate Commissioner. A suit was filed by the appellant thereafter. A counter claim was filed by Respondent No. 1 in the said suit claiming damages for wrongful detention of her belongings on 24.06.1992. The amount of claim was purported to have been made on an allegation that validity of a National Saving Certificate could not be renewed and, thus, she had suffered a loss of Rs. 88,000/-. She also claimed damages to the tune of Rs. 50,000/- for wrongful detention of her belongings including garments and personal effects. The suit was withdrawn. The counter claim, however, was treated to be a suit. It was decreed.

One of the questions which was raised in the appeal was as to whether the said counter claim was barred by limitation.

The Division Bench of the High Court on the premise that Section 22 of the Limitation Act, 1963 shall be applicable proceeded to hold that the suit was not barred by limitation.

One of the learned Judges of the Division Bench although opined that a completed tort is not a continuing wrong, but held:

> "...It is of the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the injury. If the wrongful act causes an injury which is complete, there is no continuing wrong through the damage resulting from the act may continue."

In support of its judgment, the Division Bench has placed strong reliance upon a Division Bench decision of the Calcutta High Court in *Sarat Chandra Mukherjee* v. *Nerode Chandra Mukherjee and Ors.*, AIR (1935) Calcutta 405. It was a suit for declaration of plaintiff's right in respect of user of the lands on which certain sheds had been created as a passage which was obstructing thereto. It was in that premise held to be a continuing wrong.

A suit for damages, in our opinion, stands on a different footing *vis-a-vis* a continuous wrong in respect of enjoyment of one's right in a property. When a right of way is claimed whether public or private over a certain land

A over which the tort-feasor has no right of possession, the breaches would be continuing one. It is, however, indisputable that unless the wrong is a continuing one, period of limitation does not stop running. Once the period begins to run, it does not stop except where the provisions of Section 22 would apply.

B Articles 68, 69 and 91 of the Limitation Act govern suits in respect of movable property. For specific movable property lost or acquired by theft, or dishonest misappropriation or conversion; knowledge as regards possession of the party shall be the starting point of limitation in terms of Article 68. For any other specific movable property, the time from which the period C begins to run would be when the property is wrongfully taken, in terms of Article 69. Article 91 provides for a period of limitation in respect of a suit for compensation for wrongfully taking or injuring or wrongfully detaining any other specific movable property. The time from which the period begins to run would be when the property is wrongfully taken or injured or when the detainer's possession becomes unlawful.

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The possession was said to have been taken over the entire property on 16.03.1987 when the appellant had put a lock in the room. The counter claim was filed by Respondent No. 1 on 24.06.1992, i.e., five years after the alleged detention. In the peculiar facts and circumstances of a case of this nature, if Article 91 of the Limitation Act would not apply, the residuary E provision would. The fact that the plaintiff had locker in the room where the almirah containing the goods belonging to Respondent No. 1 was stored was known to Respondent No. 1 on 16.03.1987. She knew thereabout. If she had to claim damages for that act on the part of the appellant, she should have filed a suit within a period of three years from the said date. Furthermore, F Respondent No. 1 knew about the purported alleged wrongful act on the part of the appellant. She filed an application in the nature of *pro intersse suo* in the earlier suit. The same was rejected. Her cause of action was different and distinct from that of her brother. One lis was in relation to the declaration of title as also possession, another one was in respect of damages for wrongful detention of specific movable properties. Only because in another legal G proceedings by and between the appellant and Respondent No. 2, an Advocate Commissioner was appointed and inventory of the goods of the said room was prepared, the same, in our opinion, would not give rise to a fresh cause of action for laying a claim for damages. The matter might have been different if a suit for possession of the goods had been filed.

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We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.

D.G. Appeal allowed.