

Ram Saran and Another

Vs

Smt. Ganga Devi

Civil Appeal No. 726 of 1968

(G. K. Mitter, K. S. Hegde, A. N. Grover JJ )

17.04.1972

JUDGMENT

HEGDE, J. -

1. This is a plaintiffs' appeal by special leave. Ram Saran and Raghubir Saran, the plaintiffs are brothers. They jointly owned suit property with Chhabili Kuer, widow of Lalita Prasad. After the death of Chhabili Kuer, on February 8, 1971, Ganga Devi, the defendant in the suit came forward as the legal representative of Chhabili Kuer and got the mutation effected in her name in the place of the deceased Chhabili Kuer. In 1958, the plaintiffs brought this suit for a declaration that they are the sole owners of the suit properties. They did not claim possession either the entire or even any portion of the suit properties.
2. The fact finding courts, namely the trial court as well as the appellate courts have come to the conclusion that during the life-time of Chhabili, she was in possession of a portion of the suit properties and the other portion remained in possession of the plaintiffs. The further finding reached by those courts is that after the death of Chhabili Kuer, Ganga Devi took unlawful possession of the properties which were in possession of Chhabili Kuer. They also found that Ganga Devi was not the heir of Chhabili but on the other hand the plaintiffs were her heirs.
3. The courts below have come to the conclusion that the present suit falls within the scope of Section 209 of the U.P. Act 1 of 1951, and the suit not having been brought within the period of three years as provided in that Act, the suit is barred by limitation. The High Court agreed with that conclusion. In addition it held that the suit is hit by Section 42 of the Specific Relief Act.
4. We are in agreement with the High Court that the suit is hit by Section 42 of the Specific Relief Act. As found by the fact-finding courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence the suit is not maintainable. In these circumstances, it is not necessary to go into the other contention that the suit is barred by limitation.
5. In the result this appeal fails and the same is dismissed with costs.

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