

Bachan Singh

Vs

Dhian Dass and Others

Civil Appeal No. 689 of 1967

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

27.04.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by special leave. The facts of the case lie within a narrow compass and the questions of law arising for decision are also few.
2. The suit from which this appeal arises is for possessions of the suit properties on the basis of the plaintiff's title. One Tehal Singh sold the suit properties to the predecessors-in-interest of the defendants by means of a deed, dated October 11, 1894. His son Krishna Singh sued for a declaration that the said alienation being an alienation of ancestral properties was inoperative against his reversionary interest as it had been effected without consideration and without legal necessity. This suit was filed on October 11, 1895. The suit was decreed in part. The decree declared that the plaintiff Krishna Singh will be entitled to recover possession of the suit properties after the death of his father on payment of the suit properties after the death of his father on payment of Rs. 2,500/-. This decree was made on November 28, 1895. But Krishna Singh died during the life time of Tehal Singh. Thereafter Tehal Singh adopted the appellant on April 11, 1944. Tehal Singh died in 1949. The present suit was brought in 1959.
3. The trial court dismissed the suit as being under the provisions of the Punjab Limitation (Custom) Act, 1920 (Act 1 of 1920). That decision was affirmed by the first appellate court as well as by the High Court in second appeal.
4. The material portion of Section 5 of the Punjab Limitation (Custom) Act, 1920 runs :

"Notwithstanding anything to the contrary contained in the 1st Schedule of the said Act (Indian Limitation Act, 1908), every suit, of any description specified in the Schedule annexed to this Act instituted after the period of limitation prescribed, therefore, in the Schedule shall be dismissed although limitation has not been set up as a defence."

Article 2(A) of the Schedule provides :

# "Description of suit Period of limitation2(A) Suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom - (a) if no declaratory decree the nature referred to in article ... 6 years (b) if such a declaratory decree is obtained ... 3

years."##

5. It was conceded at the bar that if the suit property is held to be the ancestral property qua Tehal Singh then the relevant period of limitation is that prescribed in clause (b) of Article 2(A) of the Punjab Limitation (Custom) Act, 1920.
6. The first contention taken on behalf of the appellant is that the provisions of the Punjab Limitation (Custom) Act, 1920 do not apply to the facts of the present case as the suit properties were not the family properties of Tehal Singh. This contention does not appear to have been taken either before the trial court or before the first appellate court. It was taken for the first time before the High Court in second appeal. The High Court considered that contention and rejected the same. In our opinion, the High Court should not have allowed that contention to be raised for the first time in second appeal as a decision on that contention involved detention of question of fact.
7. Prima facie the contention of the appellant that the suit properties were not ancestral in the hands of Tehal Singh is unsustainable. If those properties were not ancestral properties of Tehal Singh, Krishna Singh could not have interdicted the sale effected by his father. The very basis of the present suit is the decree obtained by Krishna Singh. Hence we are unable to accept the contention that the suit properties were not ancestral in the hands of Tehal Singh.
8. The next contention taken on behalf of the appellant is that the period of limitation fixed for filing the suit under Article 2(a) of the Punjab Limitation (Custom) Act, 1920 stood suspended because of the general principles of suspension of limitation or right of action. In order to appreciate this contention, it is necessary to state a few more facts. After the death of Tehal Singh, his collaterals contested the genuineness and validity of the adoption of the appellant. The revenue authorities refused to transfer the registry in the name of the appellant until his title was established in a Civil Court. Consequently the appellant sued for a declaration that he had been validly adopted by Tehal Singh. This suit was dismissed by the trial court. But the first appellate court allowed the appeal of the appellant and decreed his suit in 1952. Thereafter the opposite party took up the matter in second appeal to the High Court. The second appeal was dismissed in 1959. It may be noted that to that litigation, the present defendants or their predecessors-in-title were not parties. It was contended on behalf of the appellant that because of the litigation between the appellant and the collaterals of his adoptive father, the period of limitation for filing the present suit stood suspended.
9. Quite clearly the appellant cannot get the benefit of either Section 14 or Section 15 of the Limitation Act, 1908. The previous litigation was not a litigation between the parties to the present suit or between their predecessors-in-title. Section 15 of the Limitation Act is equally inapplicable as the appellant was not restrained from filing the suit from which this appeal has arisen for any of the reasons mentioned in that section. Hence the appellant was compelled to fall back on what is called the general principles of suspension of limitation or right of action. In support of this contention reliance was primarily placed on the decision of the High Court of Allahabad in *Murli Dhar and Others v. Ram Saran Dass and Others* (ILR 1946 All 633 : AIR 1947 All 256 : 1947 ALJ 170.). We have not thought it necessary to examine whether the provisions of the Limitation Act, 1908 were exhaustive and whether it can be said that there are any general principles of suspension of limitation or right of action in addition to those mentioned in that Act. Admittedly the appellant's title was cleared in 1952 when the first appellate court declared that he had been lawfully adopted as the son of Tehal Singh. This cleared his way - if clearing of the way was necessary - for instituting the suit for possession against the defendants. He had no justification either in law or in equity for not suing the defendants for possession of the suit properties thereafter.

10. For the reasons mentioned above, we find no merit in this appeal and it is accordingly dismissed with costs.

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