

Rameshwer Dubey and Others

Vs

Masomat Asha Kaur and Others

Civil Appeal No. 10702 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

05.08.1996

ORDER

1. Though notice was served on the legal heirs of the 1st respondent and the counsel who had appeared earlier and had taken time has now reported that in spite of his writing three letters, there is no response from them. The legal heirs are brought on record.
2. Leave granted.
3. The only question that arises for consideration in this case is which Article of the Schedule to the Limitation Act, 1963 (for short "the Act") would be applicable to the facts in this case ? The courts below found as a fact that though the sale deed was executed on 12-7-1966 by Asha Kaur, the first respondent in favour of one Ganesh Missir, it was found that Ganesh Missir had played fraud upon her and that, therefore, the sale deed is vitiated by fraud. She remained in possession till 14-12-1970 and, therefore, the sale deed does not bind her. She filed a suit against the defendants including the appellants who came to have another sale deed dated 14-12-1970 pursuant to which the plaintiff was sought to be dispossessed. She filed the suit within three years for adjudication under Section 31 of the Specific Relief Act that the sale deed are void and for injunction when she was sought to be dispossessed on 15-2-1973 under the sale deed. It was also her contention that the second sale deed also was vitiated by fraud because of her incapacity and illiteracy. That also found favour with the courts below and the High Court. Accordingly, her suit came to be decreed.
4. It is contended by the appellants that whatever may be the finding regarding the sale deed of 1966, there cannot be any second fraud in the case of the second sale deed. The suit ought to have been filed under Article 58 of the Schedule to the Act and not under Article 64. We find no force in the contention. In view of the finding recorded by the courts below as a finding of fact that a fraud was played upon her, the fraud unravels the entire transaction to be a void document. Therefore, the limitation starts running from the date when the cause of action had arisen, viz., when dispossession was sought to be made. It is seen that the first respondent was sought to be dispossessed from her land in 1973. The sale deed came to be executed within three years from the date. Under these circumstances, since she remained in possession till that date, there is no need to file a suit under Article 59 of the Schedule to the Act. Therefore, the suit was rightly filed within three years under Article 58 of the Schedule to the Act and the courts below decreed it and the High Court upheld the same. Accordingly, it does not warrant interference.
5. The appeal is accordingly dismissed. No costs.