

Parwatabai

Vs

Sonabai and Others

Civil Appeal No. 11401 of 1996

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

12.08.1996

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides.

3. The admitted facts are that the lands in dispute belonged to Punjaba and on his demise, his widow Parwatabai had succeeded to his estate in 1941. Consequently, she became the owner of limited estate. It is the appellant's case that Parwatabai and executed a registered gift deed in favour of her husband in 1941 and ever since they are in possession and enjoyment of the lands. Admittedly, the respondents are daughters of Parwatabai. It is their case that on the demise of their mother, they became the owners of the property and were in possession of the property till 1976 when they were dispossessed and as a consequence the suit was filed for possession based on title. Though it was specifically not pleaded on title, admittedly on fact situation, suit was filed under Article 65 of the Schedule to the Limitation Act, 1963 (for short "the Act"). The trial court negatived the respondents' claim and dismissed the suit. On appeal, the appellate court decreed the suit holding that the respondents had on the demise of their mother in 1966 succeeded to the estate of their father. Therefore, they are entitled to the possession since the suit was filed within 10 years under Articles 65 of the Act. Thus, this appeal by special leave.

4. Shri U. U. Lalit, the learned counsel for the appellant, contended that since the husband of the appellant remained in possession, pursuant to the gift deed executed by Parwatabai, by operation of Explanation (b) to Article 65, burden is on the respondents to establish as to when the possession of the appellant became adverse and they failed to discharge the same. Therefore, the appropriate article applicable to the facts would be Article 64 and not Article 65. We find no force in the contention. Admittedly, after the demise of Punjaba, Parwatabai succeeded as widow's estate prior to 1941 and that, therefore, she was only a life estate-holder to enjoy the estate for her lifetime. Under the gift deed, what she could bequeath was enjoyment of life estate and not right and title of the property of Punjaba. Consequently, on her demise, the respondents being heirs of Punjaba are entitled to assert their right to the property of their father on the basis of their title.

5. Article 65 of the Act postulates that for possession of immovable property or any interest therein based on title, when the possession of the defendant becomes adverse to the plaintiff, the suit has to be filed within 12 years. Therefore, when the plaintiffs asserted their title on the basis of succession to the estate of their father, it is for the appellant to prove as to on which date the appellant's possession has become adverse to the respondents' title. In this case, the appellate court and the High Court found that the appellant had not established as to what was the exact date from which

the adverse possession started running. Since Parwatabai died in 1966, admittedly, the plaintiff had filed the suit in 1966 within 10 years. Under those circumstances, the appellant had not perfected the title by prescription. The courts below have rightly applied Article 65 and decreed the suit. It is not vitiated by any error of law warranting interference.

6. The appeal is accordingly dismissed, but in the circumstances, without costs.