

Bailochan Karan

Vs

Basant Kumari Naik

Civil Appeal No. 2595 of 1997

(M. Srinivasan, U. C. Banerjee JJ)

02.02.1999

JUDGMENT

M. Srinivasan J

1. The only question in this case is whether the suit filed by the respondents was barred by limitation. The relevant facts necessary for that purpose are that the appellant herein was the legitimate son of one Prahalad who in turn was son of Bagru Karan who was the owner of the property. The said Bagru Karan died and was survived by his wife, son Prahalad and daughter Pancha Dangen. Bagru Karan's widow executed a Will in favour of the daughter Pancha Dangen bequeathing the entire property to her. The latter sold the property on 6.2.1953 to the first plaintiff. The plaintiffs came into possession from that date. The suit was filed by the plaintiffs against the present appellant alleging that he was an illegitimate son of Prahalad, the son of Bagru Karan and that he had forcibly trespassed in the land in 1971. The Trial Court held that the appellant was a legitimate son of Prahalad. The suit was dismissed on the ground that the sale deed in favour of the plaintiff was void as the sale in favour of the Vendor's mother was itself void. The Appellate Court confirmed the judgment of the Trial Court and dismissed the appeal. On Second Appeal the High Court remanded the matter for ascertaining the date on which the appellant attained majority.
2. The Trial Court found that the appellant was born in the year 1945. The Trial Court held that the suit had been filed by the plaintiff before the expiration of 12 years from the date the appellant attained majority. Consequently the plaintiff had not perfected title by adverse possession.
3. On Second Appeal the High Court has reversed the conclusions by the Trial Court on the question of limitation and held that if the appellant was born in 1945, he attained majority in 1966 on completion of 21 years and he could have instituted a suit for recovery of possession within three years therefrom, i.e., 1969. The suit by the present plaintiff was filed in 1971 which was beyond the said period of three years. Consequently the High Court held that the appellant could not have filed any suit for recovery of possession and the plaintiffs had perfected title to the property by virtue of Section 27 of the Limitation Act. In the result the High Court allowed the Second Appeal and decreed the suit in favour of the respondents herein.
4. Learned Counsel for the appellant contends that the period of limitation for the appellant to institute a suit for recovery of possession is 12 years from the date of his attaining majority which, according to him, was 1966 and consequently when the plaintiffs filed the suit in 1971 they could not have acquired title under Section 27 of the Limitation Act.
5. We are unable to accept this contention. Section 60 of the Limitation Act, 1963 provides for a suit

to set aside a transfer of property made by the guardian of a ward. The starting point of limitation is the attaining of majority by the ward and the period of limitation is three years. Even assuming that the contention of the learned counsel of the appellant is correct that the sale in this case was not by a guardian and the person who represented the minor was only a *de facto* guardian being the maternal grand-father and that Article 60 will not apply, in that case the period of limitation would be 12 years from the date on which the alienation was effected. In the present case the alienation was effected in 1953 and the period of 12 years should be calculated from that date. Section 6 of the Limitation Act provides that a person entitled to institute a suit is at the time from which the prescribed period is to be reckoned, a minor, he may institute the suit within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the schedule. Section 8 provides that nothing in Section 6 applies to suits to enforce rights of pre-emptions, or shall be deemed to extend for more than three years from the cessation of the disability, the period of limitation for any suit.

6. In the present case the maximum period of limitation available to the appellant was only three years from the date of his attaining majority, in other words, cessation of the disability. This position has been considered by this Court in *Darshan Singh and others v. Gurdev Singh, 1994(6) SCC 585*. It is clearly laid down that Section 8 is a proviso to Sections 6 or 7. A combined effect of Sections 6 and 8 read with third column of the appropriate article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefor in the third column of the schedule. But such extended period would not be beyond three years from the date of the cessation of the disability. Consequently the right to file a suit of the appellant got expired at the end of three years from the date of his attaining majority, whether it was 1963 or 1966. In this case it is unnecessary for us to consider whether the appellant attained majority in 1966 on completion of 21 years or in 1963 on completion of 18 years as it is not relevant for the purposes of this case. The plaintiffs, therefore, perfected their title by virtue of Section 27 of the Limitation Act.

7. Learned counsel placed reliance on the judgment of the Orissa High Court in *Keluni Dei v. Kanhei Sahu and others, 1971(37) Cuttack Law Times 178*. The judgment in that case does not contain any reasoning with regard to the question of limitation. The High Court has held that the suit in that case was not barred by limitation. It is unnecessary for us to consider that judgment in detail. Suffice it to say that the same will not help the appellant in the present case.

8. The view taken by the High Court is correct. The appeals fails and is dismissed. No order as to costs.