

MOJIB
Habi as
P.S. Ma

1. GAN
2. Muk
3. Sures
4. Dine
5. Shiv
6. Sura

.... Appellant/s

1. GANGA MAHTO
2. Mukhi Mahto
3. Suresh Mahto @ Sukhi Mahto all sons of late Barhu Mahto
4. Dinesh Mahto son of Ganga Mahto
5. Shiv Mahto
6. Suraj Mahto both sons of Bangali Mahto all resident of mohall - Nagla ,
P.S. Malsalami , District - Patna.

Appearance :

For the Respondent/s : Mr.

3 17-12-2015 Herd the learned counsel for the appellant.

The plaintiff filed the suit for declaration that the suit property was Kabristan and Akhara land belonging to public and the reliefs accordingly were prayed in the plaint. The plaintiff claimed himself to be the representative of the public although in the plaint in the beginning the plaintiff had also averred that the suit property belonged to the family of the plaintiff. The defendants contested the claim of the plaintiff and asserted their own title and possession over the suit land.



The trial court returned the findings on the issues in favour of the plaintiff and accordingly decreed the suit. The appellate court, on reappraisal of the pleadings and evidence, however, has come to the finding that the appeal by the plaintiff filed in representative capacity was not maintainable as the procedure prescribed under Order 1 Rule 8 C.P.C. was not followed. It has also been found that the suit was barred by limitation in view of Article 58 or 113 of the Limitation Act as the right to sue first accrued to the plaintiff in the year 1979 when the proceeding under Section 144 Cr.P.C. was decided between the parties.

Mr. Thakur, the learned counsel for the appellant has strenuously argued that the provision of Order 1 Rule 8 C.P.C. is not attracted in the facts and circumstances of the case as the plaintiff has filed the suit for the benefit of the public at large. Mr. Thakur, has relied upon a decision by the apex court in the case of ***Kalyan Singh Vs. Smt Chhoti***, AIR 1990 SC 396. It has also been submitted by Mr. Thakur that the appellate court below has committed error in law in dismissing the suit as barred by limitation as the life of an order under Section 144 Cr.P.C. is only 60 days and therefore that cannot be the starting point of limitation. No other submission has been made on behalf of the

appellant.

After perusal of the judgments of both the courts below and considering the submissions, it is manifest that the plaintiff has filed the suit for declaration of public rights in the capacity of the representative of the public. In such circumstances the provisions envisaged under Order 1 Rule 8 C.P.C. are necessarily attracted. The decision given by the appellate court in the case of **Kalyan Singh**(Supra) is clearly distinguishable on facts as according to the case of the plaintiff himself the suit property was donated by the original owner both to the Hindu Community as well as the Muslim Community and in this peculiar backdrop it was all the more necessary for the plaintiff to seek leave to sue as representative of the public at large by following the procedure prescribed under Order 1 Rule 8 C.P.C. The pleadings and evidence considered by the appellate court below further disclose that there was a proceeding under Section 144 Cr.P.C. in between the parties to the suit wherein the interim order was made absolute against the plaintiff and the possession of the contesting defendants was found over the suit land. The appellate court has come to the right conclusion that the same is the starting point of limitation in view of the provision of Article 58 of the Limitation Act which prescribes three years for filing a suit for declaration

from the date when the right to sue first accrues . The submissions made on behalf of the appellant on these two points are clearly misconceived and do not find favour by this Court.

Ex consequenti, there is no substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

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