

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.243 of 2001**

Ramwati wife of Malsai Caste Kalar resident of Arandwal Tahsil Jagdalpur Distt. Bastar (CG)

----- Appellant

Versus

1-A. Smt. Bodha Bai W/o. Narsingh

1-B. Smt. Laxana D/o Narsingh, aged 30 years

1-C. Teji Ram S/o Narsingh, aged 25 years

1-D Chaman Lal S/o Narsingh, aged 11 years

1-E. Ku. Sarita D/o Narsingh, aged 8 years,

No.1-D and 1-E are minor through their natural guardian mother Smt. Bodha Bai

All by caste Kalar, R/o Badearapur, Tahsil Jagdalpur, Distt. Bastar (CG)

2. State of Chhattisgarh through Collector Bastar

----- Respondents

For Appellant	:	Mr. Subhash Yadav, Advocate
For Res.No.1-A to 1-E	:	None present
For Respondent No.2	:	Mr.Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

20/09/2018

1. The substantial question of law involved, formulated and to be answered by this Court in this plaintiff's second appeal is as under:-

“Whether the lower appellate Court, while reversing the finding of the trial Court, has erred in holding that the Plaintiff's part of the suit is barred by time ?”

2. The imperative facts required for determination of above-stated substantial question of law are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(2.1) The plaintiff/appellant herein-Ramvati filed a suit for declaration of title and permanent injunction and in alternative, relief of possession stating inter-alia that the suit property is held by her father Sonadhar i.e. total 8.97 acres of land and after death of her father, she inherited the property. It has been further pleaded that defendant No.1 having no right to get the suit property partitioned, but by order of the Naib-Tahsildar, Jagdalpur dated 6.7.82, defendant No.1 got his name mutated in revenue records to the extent of 4.48 acres of land and remaining 4.46 acres of land remained in the name of the plaintiff. Thereafter, by order dated 20.10.89, defendant No.1 again got mutated his name in the revenue records along with the plaintiff in remaining 4.46 acres of land. Order dated 20.10.89 was challenged by the plaintiff before the Superintendent, Land Records. The said authority by order dated 9.1.97 directed re-opening of the mutation, against which, defendant No.1 preferred an appeal and the plaintiff filed civil suit on 8.10.97 before the jurisdictional Civil Court stating inter-alia that she is exclusive title holder of the suit land and defendant No.1 be restrained from interference in title of the plaintiff and in alternative, relief of possession was also sought.

(2.2) The suit was opposed by defendant No.1 by filing written statement claiming title in the suit property.

3. On the basis of will executed by father of the plaintiff-Sonadhar, the trial Court granted decree of declaration of title in favour of the plaintiff on the suit land i.e. 8.97 acres and also confirmed title and possession of the plaintiff and granted decree of permanent injunction against defendant No.1.

4. On an appeal being preferred by defendant No.1, the First Appellate Court partly allowed the appeal and held that suit is partly time barred and confirmed the decree with respect of 4.46 acres of land.

5. Feeling aggrieved against the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

6. Mr.Subhash Yadav, learned counsel for the appellant/plaintiff, would submit that the First Appellate Court is absolutely unjustified in dismissing the suit in part recording the finding that suit is partly barred by limitation, which was not specifically raised by defendant No.1 before the trial Court, as such, the impugned judgment and decree so far as it relates to dismissal of the plaintiff's suit in part is liable to be set aside.

7. Legal representatives of defendant No.1 have been noticed by this Court, but no one appeared to support the impugned judgment and

decree.

8. I have heard learned counsel for the appellant/plaintiff and went through the records with utmost circumspection.

9. Basically, the plaintiff's suit is for declaration of title over suit land and permanent injunction and in alternative, relief of possession was also sought by her, if she was not found in possession, but ultimately the trial Court found her in possession and confirmed her possession and granted relief of declaration of title, therefore, the plaintiff's principal relief is declaration of title. Article 58 of the Limitation Act, 1963 (hereinafter called as "the Act of 1963") applies only where the suit is for declaration, which states as under:-

58	To obtain any other declaration	Three years	When the right to sue first accrues.
----	---------------------------------	-------------	--------------------------------------

10. Article 58 of the Act of 1963 prescribes a period of limitation of three years commencing when the right to sue first accrues. It is trite law that the limitation would not commence unless there has been a clear and unequivocal threat to infringe the right claimed by the plaintiffs (See C. Mohd. Yunus v. Syed Unnissa¹, Rukhmabai vs. Laxminarayan² and Mt. Bolo vs. Mt. Koklan³).

11. In C. Mohd. Yunus's case (supra) it is further held that mere denial by the defendant of the rights of the plaintiffs would not set the

¹ AIR 1961 SC 808

² AIR 1980 SC 335

³ AIR 1930 PC 270

period of limitation running against them. In **Mst. Rukhmabai's** case (supra), Their Lordships observed that where there were successive invasions or denials of right, the right to sue would accrue when the defendant had clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Their Lordships also observed:-

“Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be clear and unequivocal threat so as to compel him to file a suit, whether a particular threat gives right to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

12. In **Daya Singh and another v. Gurdev Singh (dead) by LRs. and others**⁴ relying upon **C. Mohd. Yunus's** case (supra) Their Lordships of the Supreme Court have held that mere existence of adverse entry in revenue records does not give rise to cause of action. Cause of action to sue accrues only when right asserted in suit is infringed or there is threat to infringe that right.

13. Similarly, in the matter of **Khatri Hotels Private Limited and another v. Union of India and another**⁵ the Supreme Court has considered the earlier decisions of **Rukhmabai's** case (supra) and **Mt. Bolo's** case (supra) and held as under:-

“24. The Limitation Act, 1963 (for short, “the 1963 Act”) prescribes time limit for all conceivable suits, appeals etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down

4 (2010) 2 SCC 194

5 (2011) 9 SCC 126

that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

14. Reverting to the facts of the present case in light of the principles of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that though defendant No.1 got his name mutated in revenue records on 25.12.77 vide Ex.P/1 along with the plaintiff and adverse entry in revenue records came into existence, but the period of limitation would not start running from that date as held in C. Mohd. Yunus' case (supra). Later on, by order dated 6.7.82, the suit land is directed to be partitioned by the revenue court vide Exs.P/2 and P/3 in the names of plaintiff and defendant No.1 separately, but thereafter vide Ex.P/4 again name of defendant No.1 was jointly recorded in the suit land by order dated 20.10.89, then the plaintiff questioned that order before the Superintendent, Land Records by filing

the application/petition. The said revenue officer passed an order dated 9.1.97 finding revenue entry Ex.P/4 as suspicious. That order was questioned by defendant No.1 by filing appeal by which the plaintiff's right to hold the land was seriously questioned, which persuaded the plaintiff to file a suit for declaration of title and permanent injunction on 8.10.97, which is clearly within the period of limitation under Section 58 of the Act of 1963 and it has rightly been held by the trial Court that the suit is within the period of limitation, but the First Appellate Court reversed the finding of the trial Court on the ground that when first time mutation entry was made in revenue records on 25.12.77, it ought to have been challenged by the plaintiff, however, it has been held by the Supreme Court in Daya Singh's case (supra) that mere existence of adverse entry, the period of limitation under Article 58 of the Act of 1963 for declaration would not commence, therefore, the First Appellate Court to that extent was not right in holding that the period of limitation would start running from 25.12.77. The First Appellate Court has further recorded a finding that the suit could have been filed within 12 years from 6.7.82 when the partition was made by the Naib-Tahsildar, Jagdalpur. The said finding is again not correct because the plaintiff in her wisdom decided to wait and did not challenge that order, but when part of land i.e. 4.46 acres, which had fallen in share of the plaintiff, was again jointly recorded on 20.10.89 vide Exs.P/3 and P/4, she decided to question that order by filing an application before the revenue authority and ultimately, when the revenue authority passed an order dated

9.1.97 (Ex.P/5) re-opening of mutation order dated 20.10.89, defendant No.1 filed the appeal and thereafter, the plaintiff preferred the instant civil suit on 8.10.97 apprehending threat to infringement of her right to hold the land, which is within the period of limitation prescribed under Article 58 of the Act of 1963, as such, the finding recorded by the First Appellate Court holding part of suit to be barred by limitation is erroneous and hereby set aside. Accordingly, the substantial question of law is answered in favour of the plaintiff and against defendant No.1.

15. In the result, the second appeal is allowed and the impugned judgment and decree in part passed by the First Appellate Court are set aside and that of the judgment and decree of the trial Court are hereby restored. No cost(s).

6. A decree be drawn up accordingly.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-