

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.403 of 2002

1. Purushottam, S/o Madho Singh Kanwar, aged 39 years.
2. Devendra Kumar, S/o Madho Singh Kanwar, aged 24 years.
3. Shyamlal, S/o Khamhan Singh Kanwar, aged 50 years.

All are resident of Village Jarve, Tahsil and District Korba (C.G.)

----- Appellants

Versus

1. Sadh Ram, S/o Bhagat Ram Kanwar (Died on 20-6-2002). Through LRs
 - a. Smt. Katik Kanwar Masan, Wd/o Sadh Ram.
 - b. Radhe Lal, S/o Sadh Ram.
 - c) Sitaram, S/o Sadhram.
 - d) Radhabai, D/o Sadhram.
 - e) Karoona, D/o Sadhram.
2. Awadh Ram, S/o Bhagat Kanwar,

All are resident of Jarve, Tahsil and District Korba (C.G.)
3. Sabad Singh (Dead) Through LRs
 - A) Smt. Kari Bai, aged 70 yrs., Wd/o Sabad Singh.
 - B) Chintamani, aged 40 yrs.
 - C) Surendra Singh, aged 38 yrs.
 - D) Pushpendra Singh, aged 36 yrs.
 - E) Manoj Singh, aged 34 yrs.
 - F) Udhav Singh, aged 32 yrs.

B to F S/o Late Shri Sabad Singh Kanwar, All R/o Dhanwarpara (Gaudhauri), Post & Tah. Kartala, Distt. Korba (C.G.)
4. State of Chhattisgarh, Through Collector, Korba (C.G.)

----- Respondents

For Appellants: Mr. O.P. Agrawal, Advocate.

For Respondents No.1.a. to 1.e., 2 and 3A to 3F: -

Mr. Malay Kumar Bhaduri, Advocate.

For Respondent No.4 / State: -

Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

27/11/2018

1. The substantial question of law formulated for determination while admitting the appeal states as under: -

“Whether both the courts below were not justified in holding that the suit was time barred especially when the suit for possession has not been filed by the appellants?”

(For the sake of convenience, parties would be referred as per their status shown in the trial Court.)

2. The plaintiffs filed suit for declaration of title that they are the exclusive title holders of the suit land described in para 4 of the plaint and decree for permanent injunction be granted restraining the defendants from mutating their names in the revenue records which was opposed by the defendants stating that pursuant to the order of partition dated 2-7-1974, the suit land fell in the share of the defendants' mother Galara Bai and the suit is also barred by limitation. The trial Court dismissed the suit on merits as well as on the point of limitation holding that on 2-7-1974, the order of partition was passed and suit was filed on 27-8-1992, whereas it ought to have been filed within 12 years from 2-7-1974. The said finding was affirmed by the first appellate Court. The question of law has been framed only with regard to limitation as incorporated in the opening paragraph of this judgment.
3. Mr. O.P. Agrawal, learned counsel appearing for the appellants/ plaintiffs, would submit that both the courts below were absolutely

unjustified in holding that the suit was barred by limitation reckoning limitation from the date of order of partition dated 2-7-1974, whereas it ought to have been reckoned from the date of order of mutation i.e. July, 1972 and the suit was filed on 27-8-1992 as such, the judgment & decree passed by both the courts below deserve to be set aside.

4. On the other hand, Mr. Malay Kumar Bhaduri, learned counsel appearing for the defendants/respondents would oppose the submission.
5. I have heard learned counsel for the parties and went through the record with utmost circumspection.
6. The order of partition was passed on 21-4-1971 by the Naib Tahsildar which was partly allowed by the Sub-Divisional Officer (Revenue) on 29-6-1972 and ultimately, on appeal by Galara Bai vide Ex.D-4, the Commissioner on 21-12-1973 held and directed predecessor-in-title of Galara Bai – Khamhan Singh to get the question of title adjudicated by the civil court and three months' time was granted. Ultimately, on 2-7-1974, the Additional Tahsildar passed the order of partition, as no civil suit was filed by the predecessor-in-title of the plaintiffs for adjudication of their title. The instant civil suit was filed on 27-8-1992 for declaration of title and permanent injunction.

7. Article 58 of the Limitation Act, 1963 provides as under: -

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.

8. Three years period has been prescribed when the right to sue first accrues for claiming declaration. In the instant case, the order of Commissioner is dated 21-12-1974 (Ex.D-4) which clearly overruled the objection of the predecessor-in-title of the plaintiff – Khamhan Singh and directed the plaintiff to get the question of title adjudicated and three months' time was granted for the same, however, three months' time expired, but the plaintiff did not take steps for getting the question of title adjudicated and ultimately, preliminary order of partition was passed on 2-7-1974 and the plaintiffs filed suit only on 27-8-1992 which is much beyond the period of limitation of three years as prescribed for seeking declaration under Article 58 of the Limitation Act, 1963, which has rightly been held to be barred by limitation by the trial Court and which has rightly been affirmed by the first appellate Court which is neither perverse nor contrary to record. The concurrent finding of the two courts below are hereby affirmed. Consequently, the second appeal is liable to be dismissed and is accordingly dismissed. The substantial question of law is answered accordingly. No order as to cost(s).

9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge