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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 28.06.2019

Judgment Delivered on : 12/09/2019

S.A. No. 412 of 1999

1. Kunj Bihari, S/o. Roop Narayan, aged 20 yeas, Occupation – Agriculture, R/o. Nagar Surajpur, Tehsil Surajpur, District – Sarguja M.P.
2. Laxman, aged 15 years, R/o. Nagar Surajpur, Through : Natural Guardian and father Roop Narayan, R/o. Nagar Surajpur, Tehsil Surajpur, District Sarguja, M.P.
3. Ramesh Kumar, S/o. Shivnarayan, aged 28 years, Occupation – Business, R/o. Village Lakhanpur, Tehsil – Ambikapur, District – Sarguja, M.P.
4. Suresh Kumar, S/o. Shivnarayan, aged 23 years, Occupation- Cultivation, R/o. Village- Darripara, Tehsil Surajpur, District -Sarguja, M.P.
5. Shivnarayan now dead
 - (2a) Kunti Bai, Wd/o. Late Shivnarayan, aged 65 years,
 - (2b) Uma Devi, D/o. Late Shiv Narayan, aged 30 years,Both are r/o. Village – Darripara, Tahsil – Surajpur, District – Surguja (C.G.)
6. Roop Narayan, S/o. Late Sitaram Sahu, aged about 45 years, Occupation – Agriculture, City – P.S. and Tehsil Surajpur, District – Sarguja, M.P.
7. Mohan, S/o. Late Sitaram Sahu, aged 35 years, Occupation – Agriculture, R/o. Nagar, Thana & Tehsil – Surajpur, District – Sarguja, M.P.

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Versus

1. Vijay Kumar Agrawal, S/o. Late Ishwar Chand Agrawal, aged about 50 years, R/o. Main Road, Vishrampur, P.S. -Vishrampur, Teh. Surajpur, District – Sarguja, M.P.
2. Radheshyam Agrawal, S/o. Late Ishwarchand Agrawal, aged about 50 years, R/o. Main Road, Surajpur, P.S. & Tehsil – Surajpur, M.P.
3. Girdharilal, S/o. Late Ishwarchand Agrawal, aged 42 years, R/o. Main Road Surajpur, P.S. & Tehsil - Surajpur, District Sarguja, M.P.
Presently residing at Bilaspur, C/o. Ruchi Garments, Opposite Swimming Pool, Mungeli Nagar, Bilaspur, M.P.
4. Banke Bihari, S/o. Late Ishwarchand Agrawal, aged 40 years, R/o. Main Road, Surajpur, P.S. & Tehsil Surajpur, District – Sarguja, M.P.

5. Gajanand, S/o. Late Banarsi Das, aged about 45 years, R/o. Ketkato Road, Surajpur, tehsil – Surajpur, District Sarguja, M.P.
6. Pisto Bai, now dead
 - 6(A) Anand Agrawal, S/o. Late Ram Awtar Agrawal, aged about 32 years,
 - 6(B) Shiv Kumar Agrawal, S/o. Late Ram Awtar Agrawal,
Both are R/o. Village – Chandrasekharpur, P.S. Chhal, Shri Ambika Rice Mill, Edu. Dharmjaigarh, District -Raigarh (C.G.)
7. Shankarlal Agrawal, S/o. Late Laghuram Agrawal, aged about 45 years, Businessman, R/o. City Manendragarh, Tehsil – Manendragarh, District – Sarguja, M.P.

-----Respondents

For Appellants	: Mr. Kishore Bhaduri, Advocate with Mr. Pankaj Singh, Advocate
For Respondents	: Mr. Sanjay Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V JUDGMENT

12/09/2019

1. This second appeal has been preferred against the consecutive findings of the trial Court in Civil Suit No.89-A/89 judgment and decree dated 30.07.1991, passed by the Civil Judge Class-II, Surajpur, and in Civil Appeal No.13-A/98, in Civil Appeal No.13-A/1998, judgment and decree dated 18.12.1998, passed by the Additional District Judge, Baikunthpur, Camp Board – Surajpur, District – Sarguja, by holding that the claim of the plaintiffs/appellants are barred by limitation.
2. The case of the appellants/plaintiffs is this that the grand father of the appellants had mortgaged the land bearing Kh. No.2170 area

0.08 acres, 2171 area 0.19, acres and Khasra Number 2172 area 0.04 acres under his title and ownership in favour of the father of the defendant No.2 for a loan of Rs.1600/-, regarding which mortgage deed was executed on 14.04.1951 by handing over the possession of the property to Banarsi Das and Lacchuram on the same date. The terms of the mortgage deed is this that after completion of two years, the amount will be repaid without interest and the possession of the property will be handed over back to the first party. It is pleaded in the plaint that because of financial difficulties, the mortgaged property could not be redeemed after payment of loan and the grand father of the appellant No.1 and 2 and father of the appellants No.5 to 7 expired on 20.02.1975. The appellants came to know about the usufructuary mortgage deed dated 14.04.1951 for the first time on 19.05.1989, thereafter, offer was made from the appellants side for repayment of loan of Rs.1600/ and for redemption of the mortgage property, which was refused by the respondents side. Hence, the suit was brought praying for grant of reliefs.

3. In written statement, it was replied that late Sitaram Sao was a party to the usufructuary mortgage deed dated 14.04.1951, which was a registered deed. During his lifetime, late Sitaram never made proposition for repayment of loan and for redemption of mortgage property. It was denied that appellant came to know of the mortgage for the first time on 14.04.1981. The other pleadings were also denied praying for dismissal of the suit.

4. Trial Court framed issues and after completion of trial, passed the judgment and decree dated 30.07.1991. The trial Court has apart from the other findings given on the issues framed, has held that according to the article 61 of the Limitation Act, the appellants had entitlement to file suit for redemption within 30 years. Cause of action had arisen in favour of the appellants from 14.04.1953 and no suit was filed till 14.04.1983, therefore, the suit was held to be barred by limitation and dismissed.
5. The appellate Court has in Civil Appeal 13-A/1998 vide judgment and decree dated 18.12.198 has upheld the judgment and decree of the trial Court observing that period of limitation is governed by Article 148 of Indian Limitation Act, 1908, that also provides limitation of 30 years for filing civil suit. It has also observed that the appellants were not entitled for benefit under Section 6 of Limitation Act. Therefore, the suit of the appellants was held to be clearly barred by limitation. The judgment and decree of both the Courts below is under challenge before this Court.
6. The second appeal was admitted for hearing and the following substantial questions of law were framed by this Court :-

“(1) Whether the Court below was legally justified in dismissing the suit for redemption of mortgage by holding it barred by time?

(2) Whether the Court below erred in denying the benefit of Section 6 of Limitation Act to the plaintiffs?”

7. It is submitted by the learned counsel for the appellants that under the provisions of Article 148 of Limitation Act, 1908, the limitation for filing suit for redemption was 60 years. The Limitation Act, 1963 has after this enactment has reduced the period of limitation of 60 years to 30 years. As it is a case, where the mortgage deed was executed in the year 1951 with stipulations for two years for repayment of loan, therefore, the limitation started from the year 1953 and the appellants had the limitation of 60 years. Therefore, the appellants had limitation available to file suit up till year 2013. Hence, the decision of the both the Courts below is erroneous. Reliance has been placed on the judgment of Supreme Court in ***Patel Bhudarbhai Maganbhai & Anr. Vs. Patel Khemabhai Ambaram & Ors.***, reported in ***(1997) 10 SCC 611*** and it is prayed that the appeal be allowed.
8. Counsel for the respondents submits that the suit has been filed in the year 1989, therefore, in this case, provisions of Limitation Act, 1963 shall be applicable. Section 30 Clause (a) of the Act of 1963 provides that any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of seven years after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier. Therefore, the appellants in this case had entitlement to file a suit within 7 years from the date of Act of 1963 came into force. Hence, the suit filed by the appellants is clearly beyond the limitation. Reliance has been placed in case of ***Gulkandi & Anr. Vs.***

Harnarayan Fulchand, reported in **AIR 1980 M.P. 111** and in case of **R. Krishna Murthy Vs. Smt. Anna Purnamma & Ors.**, reported in **AIR 1989 Karnataka 209**, **Kammili Venkatratnam Vs. Kammili Krishna Murthy and Ors.** reported in AIR (AP) 1977 (95), **Shri Venugopalaswamy Varu Temple Vs. Visweswara Prasad and Anr.** reported in **(1969 AIR (AP) 24)**, **Darshan Singh & Ors. Vs. Gurdev Singh** reported in **(1994) AIR (SCW) 4085**, **Chinnaiah Kownder Vs. Kattayya Kownder** reported in **(1978) AIR (Madras) 51**. It is prayed that the appeal be dismissed.

9. I have heard the learned counsel for both the parties at length and perused the documents and evidence on record.

Question No.1

10. The trial Court framed specific issue on limitation. It was held by the trial Court that the date of mortgage deed was 14.04.1951 and there had been time stipulated for refund of loan that was two years, on that ground the cause of action for redemption started from 14.04.1953 and according to the Article 61 of the Limitation Act, 1963, the limitation prescribed is 30 years and the suit was filed after expiry of limitation on this basis it was held that suit was time barred.
11. The Appellate Court had in its finding agreed that cause of action started from 14.04.1953. Further it was considered that earlier under the Limitation Act of 1908, limitation for filing of redemption suit was 60 years. It is discussed that after the repeal of Act, 1908,

Section 30 (a) of the Act, 1963 specifically provides that where the limitation period has been provided for filing suit in a particular case has been reduced, in the new Act suit can be brought within 7 years from the date new Act becomes effective or within time limit prescribed in the old Act which ever expires earlier. On this basis, it was held that the new Act came into force in the year 1963 and the civil suit was filed on 20.07.1989 beyond the period of seven years from enactment of the new Act. On this basis, the ratio laid down in case of *R. Krishna Murthy Vs. Smt. Anna Purnamma & Ors. (supra)*, where in it was held that limitation provided under new Act shall prevail and on this basis finding was given that suit was time barred.

12. Article 148 of the Limitation Act, 1908 before its repeal stood as under :-

Description of suit.	Period of limitation.	Time from which period beings to run
148.— Against a mortgagee to redeem or to recover possession of immovable property mortgaged	[Sixty years]	When the right to redeem or to recover possession accrues

13. The Limitation Act, 1963 was made effective from 01.01.1964 and the new provisions under Article 61 in Part-5 of the Schedule provides limitation for bringing suit for redemption by the mortgagor as 30 years from the date right to redeem or to recover possession accrues.

14. Section 30 (a) of the Limitation Act, 1963 provides as under:-

30. Provision for suits, etc, for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908. – Notwithstanding anything contained in this Act, –

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 (9 of 1908), may be instituted within a period of [seven years] next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908 (9 of 1908), whichever period expires earlier.

[Provided that if in respect of any such suit, the said period of seven years expires earlier than period of limitation prescribed therefor under the Indian Limitation Act, 1908 (9 of 1908) and the said period of seven years together with so much of the period of limitation in respect of such suit under the Indian Limitation Act, 1908 (9 of 1908), as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefor under this Act;]

15. On perusal of the above mentioned provisions, it is very much clear that the limitation of 30 years according the new Act was not completed on the day, the new Act was enacted, therefore, this case falls under the proviso clause, which specifies that in this condition, the suit may be instituted within a period of limitation prescribed,

therefore, under this Act, i.e. the limitation available to the plaintiffs was only 30 years from the date of cause of action in accordance with the provisions under new Act.

16. Reliance of the appellants in *Patel Bhudarbhai Maganbhai & Anr. Vs. Patel Khemabhai Ambaram & Ors. (supra)* is not of any help to the appellants because it is not a case, where the limitation of 30 years have expired on the date the new Act came into force. Therefore, the advantage of the additional 7 years under Section 30 (a) of the Limitation Act, 1963 was not available to the appellants in this case. Therefore, the facts and circumstances of this case are different as the limitation in this case had expired in the year 1983, according to the proviso under Section 30 (a) of Act, 1963. After over all consideration, this Court is of the opinion that the trial Court and the first appellate Court have committed no error in coming to this conclusion that suit was time barred.

Question No.2.

17. On perusal of the plaint, it is found that there is no pleading of legal disabilities as provided under Section 6 of the Act, 1963. Further no specific issue was framed on this point. Further the trial Court has considered the arguments of the appellants/plaintiffs regarding entitlement under Section 6 of Limitation Act on the ground of minority. The appellants/plaintiffs No.1, 2, 3 & 4 were minor when the suit was filed, however, the appellants/plaintiffs No.5, 6, 7 were major when the suit was filed. It is relevant to note that accrual of cause of action in favour of these appellants took place on the death

of Sitaram Sahu, who expired in the year 1975, therefore, the appellants/plaintiffs have brought the suit in capacity of successor of Sitaram Sahu and not in their own capacity. Therefore, in this case, the running of cause of action will start from the date the original party to be mortgaged agreement had the entitlement to redeem the mortgage property and bring the suit for redemption, which has been carried forward by the appellants. This observation finds support from the pleadings of the appellants themselves, in which they have never denied the execution of mortgage deed and suit is also very much for redemption of the mortgage property.

18. In this particular case, the appellants do not have entitlement to claim the benefit of legal disabilities of Limitation Act, 1963 for the reasons that the appellants are governed by Section 7 of the Act, 1963, which provides as follows :-

Section -7. Disability of one of several persons.—

Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

19. In view of the provisions under Section 7 of Limitation Act, 1963, the appellants No.5, 6 & 7 were persons, who were not under any disability when the time limit for filing suit for redemption was

running and had concluded somewhere in the year 1984. Therefore, the running of the limitation against the appellants No.5, 6, & 7 has made the running limitation with respect to the appellants No.1, 2, 3 & 4 concurrent and they can not claim any kind of benefit under Section 6 of the Limitation Act.

20. In *Kammili Venkatratnam Vs. Kammili Krishna Murthy and Ors. (supra)*, it was held that once, the limitation begins to run, subsequent to that disability of legal representatives of the party shall not prevent any of the time, therefore, it could not be made a ground to invoke the benefit under Section 6 of the Act.
21. In reliance of the respondents in *Shri Venugopalaswamy Varu Temple Vs. Visweswara Prasad & Anr. (supra)*, it was held similarly. The High Court in *Darshan Singh and others Vs. Gurdev Singh (supra)* has held that disabilities must be present, when the cause of action arose. Therefore, on this basis the conclusion drawn by this Court's below finds support. In conclusion, the decision of both the substantial questions of law by this Court are in negative.
22. After due consideration on all the evidence and the facts, circumstances of the case, the legal submission made by counsel for both the parties and the law applicable, I come to this conclusion that the appeal is without any substance, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge