

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.80 of 2004

1. Bhanara Bai (correct name Majara Bai) widow of Darbari Lodhi, aged about 70 years.
2. Tulsi Ram @ Guliya Lodhi son of Darbari Lodhi, aged 55 years.
3. Badri son of Darbari Lodhi, aged 50 years.
4. Banshi son of Darbari Lodhi, aged 45 years.
5. Murarli son of Darbari Lodhi, aged 40 years.
6. Pawan son of Darbari Lodhi, aged 35 years.
All above are occupation – agriculturist R/o Paleni, Tahsil Saja, District Durg (CG)
7. Feklan Bai wife of Lakhan Lodhi, occupation agriculturist, R/o Khapari, Tahsil Saja, Distt. Durg.
8. Lekharam son of Narayan Lodhi, aged 50 years.
9. Dhganshuram son of Narayan Lodhi, aged 45 years.
10. Kanti Bai widow of Kedar, aged 28 years.
11. Khomin Bai D/o Kedar, aged 10 years.
12. Veeru son of Kedar, aged 7 years.
13. Heera Lal son of Kedar, aged 5 years.

All above 11 to 13 minor through natural mother Kanti Bai widow of Kedar Lodhi, resident of Paleni, Tahsil Saja, Distt. Durg.

14. Bahal son of Nandu, aged about 40 years.
15. Bena Bai widow of Jugram Gond, aged 55 years, R/o Paleni, Tahsil Saja, District Durg.
16. Kumari Bai wife of Nathuram Gond, aged 35 years, R/o Kope Dabari, Tahsil Saja, District Durg
17. Dulari Bai @ Kandi wife of Manoj Kumar Gond, aged 32 years. R/o Paleni, Tahsil Saja, District Durg
18. Najagi Bai wife of Prahlad Singh Gond, aged 29 years, R/o Kutak Tahsil Saja, District Durg
19. Champa Bai Wife of Ghasiram Gond, aged 25 years, occupation Agriculturist, R/o Tharakpur, Tahsil Saja, District Durg
20. Bhikham Singh Son of Jugraj Gond, aged 22 years, occupation Agriculturist, R/o Paleni, Tahsil Saja, District Durg.
21. Motim Bai wife of Santosh Kumar Gond, aged 20 years, occupation Agriculturist, r/o Gondkharra, Tahsil Saja, District Durg.

---- Appellants/Defendants

Versus

1. Derha Ram (died) through LRs:-
 - (i) Tekram S/o Derha, aged about 50 years.
 - (ii) Ramesh S/o Derha, aged about 45 years.
 - (iii) Bharat S/o Derha, aged about 38 years.
 - (iv) Chitri Bai Wd/o Derha, aged about 60 years.
 All R/o Palami, Tahsil Saja, District Bemetara (CG)

2. State of M.P. (Now Chhattisgarh) Through – Collector, Durg

---- Respondents

For Appellants/Defendants	:	Mr.H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate
For LR's of Res.No.1/plaintiff	:	Mr.Rajat Kumar, Advocate
For Respondents No.2	:	Mr.Ravi Bhagat, Dy.G.A.
Mr.Hari Agrawal as Amicus		

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment On Board

05/08/2019

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

“Whether under the facts and in the circumstances of the case, the suit as framed seeking the relief of possession based upon title is barred by time under Article 65 of Indian Limitation Act, 1963 ?”

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

2. The suit land was originally held by Charan Lodhi, who died in the year 1946 and his widow Ganeshiya Bai become the limited owner of the suit land. She executed sale deed dated 24.8.50 in favour of Lekharam. Ganeshiya Bai had a daughter namely Matibai, who filed Civil Suit No.78-A/1952 (Shrimati Matibai v. Lekharam and one another) for declaring the sale deed dated 24.8.50 as not binding on her as it was not alienated for legal necessity. That suit was dismissed by the trial Court on 21.10.1953. Questioning that judgment and decree, Matibai filed first appeal being Civil Appeal No.5-A/1955 (Shrimati Matibai v. Lekharam and another). The first appellate Court by its judgment and decree dated 28.7.1955 (Ex.P/1)

decreed the suit holding that sale by limited owner Ganeshiya Bai in favour of Lekharam was not for legal necessity and held that sale deed dated 24.8.50 executed by Ganeshiya Bai in favour of Lekharam shall not be binding on Matibai after death of Ganeshiya Bai. Thereafter, Ganeshiya Bai died on 30.3.91 and Matibai also died on 14.7.91. Matibai's son Derharam filed a suit for declaration of title and possession stating inter-alia that sale deed dated 24.8.50 executed by Ganeshiya Bai in favour of Lekharam has already been declared void in the earlier suit and therefore, the plaintiff being grandson of Charan Lodhi and son of Matibai has succeeded the suit property after death of her mother in his reversionary right and therefore, decree for declaration of title and possession be granted in his favour.

3. The defendants, who are legal representatives of purchaser Lekharam, resisted the suit on different grounds stating inter-alia that their possession has become adverse over the suit land and since Ganeshiya Bai did not prefer any suit questioning the sale deed dated 24.8.50, therefore, sale has become final and the suit is barred by limitation.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 4.10.96 dismissed the suit. On appeal being preferred by the plaintiff, the first appellate Court allowed the appeal and decreed the suit holding that after death of Ganeshiya Bai on 30.3.91 sale dated 24.8.50 is not binding on Matibai, plaintiff's mother and the suit filed on 10.12.92

after death of Matibai on 14.7.91 is not barred by limitation. Questioning that judgment and decree, the defendants have preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

5. Mr.H.B.Agrawal, learned Senior Counsel assisted by Mrs.Prabha Sharma, learned counsel for the appellants/defendants, would submit that the first appellate Court is absolutely unjustified in not holding that suit filed by the plaintiff is barred by Article 65 of the Limitation Act, 1963 (hereinafter called as “the Act of 1963”) as Ganeshiya Bai after passing the decree on 27.7.55 become full owner of the suit property on coming into force of the provisions of the Hindu Succession Act, 1956 on 17.6.1956 and thereafter, Ganeshiya Bai/Matibai ought to have filed a suit for possession only within 12 years from the date of coming into force of the Act of 1956 and the suit filed by present plaintiff on 10.12.92 is apparently hit by Article 65 of the Act of 1963. He relied upon the judgment of the Supreme Court in the matter of Gopalkrishna (dead) by Legal Representatives and others v. Narayanagowda (dead) by Legal Representatives and others¹ to buttress his submissions.

6. Mr.Hari Agrawal, learned counsel appearing as Amicus, would submit that Ganeshiya Bai sold the suit land being the limited owner in favour of Lekharam on 24.8.50 and on coming into force of the Act of 1956 she did not become full owner of the suit land in light of the provisions

1 (2019) 4 SCC 592

contained in Section 14 (1) of the Act of 1956 as she was not possessing the suit property on the said date on account of having been transferred the suit land in favour of Lekharam by delivering possession of the suit land, therefore, it cannot be held that by virtue of the provisions contained in Section 14(1) of the Act of 1956 Ganeshiya Bai had become full owner of the property despite the suit land having been transferred in favour of Lekharam before coming into force of the Act of 1956 and it is not the case of the defendants that Ganeshiya Bai again sold the suit land or re-executed sale deed in favour of the present defendants after coming into force of the Act of 1956. Therefore, after death of Ganeshiya Bai on 30.3.91, the plaintiff being grandson of Charan Lodhi has succeeded the suit land as reversioner and in reversionary right he has filed the suit on 10.12.1992, which cannot be held to be barred by limitation.

7. Mr.Rajat Agrawal, learned counsel for legal representatives of respondent No.1/plaintiff, adopted the submissions made by learned Amicus.
8. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
9. It is not in dispute that the suit land originally held by Charan Lodhi, who died in the year 1946 leaving his widow Ganeshiya Bai and Ganeshiya Bai became the limited owner of the suit land, which she sold on 24.8.50 in favour of Lekharam and delivered possession of the suit land to purchaser-Lekharam, which was challenged by her

daughter Matibai in Civil Suit No.78-A/1952, which was dismissed and in appeal on 28.7.55 the first appellate Court clearly held that sale deed dated 24.8.50 executed by Ganeshiya Bai in favour of Lekharam was without legal necessity and further held that sale shall not be binding on Matibai. It was observed as under:-

“8. The result is that the decree of the trial Court is set aside. I hereby declare that the sale-deed of the lands in suit dated 24-8-50, executed by respondent No.2 in favour of respondent No.1 shall not be binding on the appellant after the death of respondent No.2. For the sake of justice, I order that the respondent No.1 shall pay half of the costs of the suit and appeal to the appellant. Respondent No.2 is discharged. Respondent No.2 to bear her own costs.”

The judgment and decree passed by the appeal Court in favour of Matibai has become final as none of the parties therein to lis have taken the said judgment and decree further in appeal and as such, that has become final and attained finality.

10. Admittedly, Ganeshiya Bai died on 30.3.91 and after his death, decree passed on 28.7.55 in favour of Motibai has come into force, but immediately thereafter Matibai also died on 14.7.91 and the suit was filed by Derharam, Matibai's son, on 10.12.92, claiming his right over the suit land being legal representatives of Matibai as well as reversioner being grandson of Charan Lodhi.
11. The question for consideration would be whether the plaintiff's suit as framed and filed is barred by limitation ?
12. Section 14(1) of the Act of 1956 (came into force on 17.6.1956) states as under:-

“14. Property of a female Hindu to be her absolute property.”-(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.”

The word “any property possessed by a female Hindu” include actual as well as constructive possession. The word “possessed” is used in the broad sense and in the context means the state of owning or having in ones hand or power.

13. Admittedly, Ganeshiya Bai, a limited owner, sold the suit land in favour of Lekharam much prior to coming into force of the Act of 1956 and also delivered the possession to him (purchaser of the suit land). Therefore, by virtue of the provisions contained in Section 14(1) of the Act of 1956 she did not become full owner of the suit land. Civil Appeal No.5-A/1955 preferred by Matibai against the judgment and decree dated 21.10.1953 passed by the trial Court dismissing her Civil Suit No.78-A/1952 the appeal Court clearly held that sale deed dated 24.8.50 executed by Ganeshiya Bai in favour of Lekharam was not for legal necessity.

14. The Supreme Court in the matter of Kalawatibai v. Soiryabai and others² while considering the object of Section 14(1) of the

2 (1991) 3 SCC 410

Hindu Succession Act, 1956 has held that female Hindu must be possessed of the property as limited owner on the date the Act came into force so as to become absolute owner under Section 14(1). It was observed as under:-

“14. Thus if prior to 1956 any alienation was made by a Hindu widow of widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any rights under section 14. And so far as alienees were concerned it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. Her possession may be good against the world, her right in property may not be impeachable by the widow but her interest qua the reversioner was to continue in possession at the maximum till the lifetime of her donor or transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferee but donor or transferor. So far as the male alienees from limited owners, that is female Hindu prior to 1956, are concerned, it was held by this Court in *Radhey Krishan Singh v. Shiv Shankar Singh*³ that, the alienation could be challenged by the reversioner as there was nothing in the Hindu Succession Act which has taken away such a right. A female alienee did not enjoy better or different status as the Hindu Law applied universally and uniformly both to male and female alienees. She did not become limited owner or holder of a limited estate as understood in Hindu Law. And the alienation without legal necessity could be assailed by the reversioner. No change was brought about in this regard by the Act. If the alienation was valid i.e., it was for legal necessity or permitted by law then the donee became an owner of it and the right and title in the property vested in her. But if it was contrary to law, as in this case the gift being of entire widow's estate, then it did not bind the reversioner who could file a suit after the death of the widow. And the appellant cannot claim to have acquired title to the property under the gift deed. Nor had she become a limited owner under Hindu Law which could mature into full ownership when the Act came into force. In fact such possession was not backed any title as against reversioner which could preclude her from bringing the

3 (1973) 2 SCC 472

suit for declaration.”

15. Further, in the matter of Naresh Kumari (Smt) (Dead) By LRS and another v. Shakshi Lal (Dead) By LRS. And another⁴

the Supreme Court has also considered the fact situation whether the alienation was made without legal necessity or contrary to law and examined the nature of right transferred in favour of alienee and it was held that the alienee would only get a transitory limited right to enjoy the property during the lifetime of the widow. It was observed as under:-

“11.....The question on these facts is, whether still the appellants can claim to fall under sub-section (1) of Section 14. There could be no doubt that before a benefit of sub-section (1) of Section 14, even by the widow (Smt Kesri), could be conferred, she has to show that she is possessed of this property in dispute in lieu of her limited right of maintenance. The question is whether she was possessed of this property, to claim full right under sub-section (1) which she acquired before the 1956 Act came into force. The admitted fact is, she transferred all her right to the appellants through the said sale deed before the 1956 Act came into force. Thus, she could not be said to be possessed of this property. Thus, by her own conduct she herself relinquished all her right and even lost possession in it through the said transfer. Thus, she would not be said to be possessed of this property before coming into force the 1956 Act. Then how can she get benefit of sub-section (1) of Section 14? It may be examined from another angle. It is not in dispute that any female Hindu could only alienate her limited right in an estate prior to coming into force of the 1956 Act, which is in her possession, only for a legal necessity. If alienation is without any legal necessity or is contrary to law, the alienee would only get a transitory limited right to enjoy the property during the lifetime of the widow which is the only residuary right she possessed which could be deemed to have been transferred. Thus, after the widow's death, such property even from the alienee would revert back to the reversioners of her husband.”

4 (1999) 2 SCC 656

16. In Gogula Gurumurthy & Ors. v. Kurimeti Ayyappa⁵ the Supreme Court clarifying the position of Hindu widow has held that no one has any vested interest in succession as long as the widow is alive. It was held as under:-

“A hindu widow is entitled to the full beneficial enjoyment of the estate. So long as she is not guilty of wilful waste, she is answerable to no one. Here estate is not a life-estate, because in certain circumstances he can give an absolute and complete title. Nor is it in any sense an estate held in trust for reversioners. Within the limits imposed upon her, the female holder has the most absolute power of enjoyment and is accountable to no one. She fully represents the estate, and so long as she is alive, no one has any vested interests in the succession. It cannot be predicted who would be the nearest reversioner at the time of her death. It is, therefore, impossible for a reversioner to contend that for any loss which the estate might have sustained due to the negligence on the part of the widow he should be compensated from out of the widow's separate properties. He is entitled to get only the property left on the date of the death of the widow. The widow could have, during her lifetime, for necessity, including her maintenance alienated the whole estate.”

(Emphasis Supplied)

17. In Gopalkrishna (supra), Their Lordships of the Supreme Court, defining the reversioner held that the reversioners are the heirs of the last full owner, who would be entitled to succeed to the estate of such owner on the death of a widow or limited heir, if they be then living. Relying upon para 175 of the Mulla on Hindu Law, it was held that the interest of a reversioner is an interest expectant on death of a limited heir, and it not a vested interest. It is a spes successionis or a mere chance of succession within the meaning of Section 6, Transfer of Property Act, 1882. It cannot, therefore, be sold, mortgaged or

5 (1975) 4 SCC 458

assigned, nor can it be relinquished. A transfer of a spes successionis is a nullity, and it has no effect in law.

18. Relying upon Section 27 of the Limitation Act, it was held in Gopalakrishna (supra) that it was open to the reversioner to ignore an alienation made by a Hindu widow and period of limitation would not start to run upon transfer effected by Hindu widow, and period of limitation for filing a suit for recovery of possession would commence upon the death of widow and quoted with approval para-207 of the Mulla's Hindu law by stating as under:-

“207. Reversioner's suit for possession and limitation.- A suit by reversioners, entitled to succeed to the estate on the death of a widow or other limited heir, for possession of immovable property from an alienee from her must be brought within 12 years from her death (the Indian Limitation Act, 1908, Schedule I, Article 141), and of movable property, within six years from that date.

Now see Articles 65, 109 and 113 of the new Limitation Act, 1963.

The reversioner may sue for possession without suing to have alienation set aside. The reason is that he is entitled to treat the unauthorized alienation as a nullity without the intervention of any court.”

19. Reverting to the facts of the present case in light of above-stated legal analysis, it is quite vivid that the plaintiff being grandson of Charan Lodhi would be his reversioner and in that capacity he has filed a suit after death of Ganeshiya Bai on 30.3.91, as such, the suit cannot be said to be barred by limitation under Section 65 of the Act of 1963. In view of the fact that alienation made by Ganeshiya Bai in favour of Lekharam has already been held by the appeal Court in Civil Appeal No.5-A/1955 to be not binding on Matibai and held to be

without legal necessity, the suit filed by the plaintiff cannot be held to be beyond the period of limitation. It is held to be within limitation. I do not find any merit in this second appeal. The substantial question of law is answered in favour of the plaintiff and against the defendants.

20. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

21. Decree be drawn-up accordingly.

22. Before parting with the records, this Court appreciates the able assistance rendered by Mr.Hari Agrawal as Amicus on short notice.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-