

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 359 of 2009**

1.(a) Asharam Patel, S/o Dilchand Patel (died)
through LRs. :-

(I) Jamuna Bai Wd/o Late Shri Asharam Patel, Aged
about 49 years.

(ii) Prem shankar S/o Late shri Asharam Patel,
Aged about 27 years.

(iii) Rohit Kumar S/o Late Shri Asharam Patel,
Aged about 25 years.

(iv) Punam Bai D/o Late Shri Asharam Patel, Aged
about 29 years.

All R/o Village Navagaon, Post Office Choda,
Tahsil Kharasiya, Distt. Raigarh, Chhattisgarh.

(b). Dhaneshwar Patel S/o Dilchand Patel, Aged
about 32 years.

(c). Nandram Patel S/o Dilchand Patel, Aged about
29 years.

(d). Mst. Vrindawati, Wd/o Dilchand Patel (died
and deleted).

(e). Basanta Bai D/o Dilchand Patel, Aged about 25
years.

All are R/o Village Chaple, Police Station and
Tahsil Kharsiya, Distt. Raigarh, Chhattisgarh.

2. Leelchand S/o sunderlal Patel, Aged about 65
years.

3. Natthuram S/o Sundersai, Aged about 50 years,
Both are occupation Agriculturist, R/o Village

Chaple, Tahsil Kharsiya, Distt. Raigarh,
Chhattisgarh.

--Appellants/Plaintiffs

Versus

1. Chamru S/o Ram Prasad, Aged about 35 years.
2. Chauthram S/o Ram Prasad, Aged about 32 years.
3. Paniram S/o Ram Prasad, Aged about 29 years.
4. Jhanakram S/o Ram Prasad, Aged about 27 years.
5. Manikram S/o Ram Prasad, Aged about 23 years.
6. Anand Kunwar, Wd/o Ram Prasad, Aged about 50 years.
7. Brijlal S/o Late Ramnath Patel, Aged about 34 years.
8. Padam Lal S/o Late ramnath Patel, Aged about 28 years.
9. Kanhaiyalal S/o Late Ramnath Patel, Aged about 24 years.
10. Mst. Kartik Kunwar, Wd/o Late Ramnath Patel, Aged about 50 years.
11. Lagan S/o Sonsai, Aged about 48 years.
12. (a). Shanti Bai, Wd/o Late Laxmi Prasad, Aged about 52 years, R/o Chaple, Tahsil Kharsiya, Distt. Raigarh, Chhattisgarh.

(b). Chamrin D/o Laxmi Prasad W/o Shri Tularam, Aged about 40 years, R/o Village Kairibandha, Tahsil Sakti, District Bilaspur, Chhattisgarh.

(c). Kheer Bai D/o Late Laxmi Prasad W/o Harishankar, Aged about 35 years, R/o village

Rajghanta, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

(d). Rathlal S/o Late Laxmi Prasad, Aged about 30 years, R/o Village Chaple, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

(e) Samailal S/o Laxmi Prasad, Aged about 30 years, R/o Village Chaple, Tahsil Kharsiya, Distt. Raigarh, Chhattisgarh.

(f) Jagbai D/o Laxmi Prasad W/o Dharmalal, Aged about 25 years, R/o Village Kukrijhariya, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

13. Devchand S/o Late Moharsai, Aged about 52 years.

14. Rahsu S/o Late Moharsai, Aged 52 years.

15. Bulau S/o Late Deosai, Aged about 52 years.

16. Jhulau S/o Late Deosai, Aged about 50 years.

17. Mst. Rajghatin, Wd/o Late Mangluram, Aged about 45 years.

18. Ashram S/o Late Mangluram, Aged about 32 years.

19. Siyaram S/o Late Mangluram, Aged about 30 years.

Respondents No. 1 to 11 and 13 to 19 are R/o village Rajghatna, Tahsil Kharsiya, District Raigarh, Chhattisgarh.

20. Jhaglu S/o Chandan Sai, Aged about 48 years.

21. Lakhiram S/o Chandan Sai, Aged about 45 years.

22. Nanhi Babu S/o Late Chandan Sai, Aged about 31 years.

23. Mst. Bund Kunwar, Wd/o Chandan Sai, Aged about 60 years.

All R/o Village chaple, Tahsil Kharsiya, District Raigarh, chhattisgarh.

24. Mst. Ahilya Bai, Wd/o Neelkanth, Aged about 43 years.

25. Mst. Ram Bai, Wd/o Neelkanth, Aged about 43 years.

Both are R/o Village Chaple, Tahsil Kharsiya, Distt. Raigarh, chhattisgarh.

26. Amrit Bai D/o Neelkanth, Aged about 25 years, R/o Village Chhota Mudpar, Post Mainpara, Tahsil Kharsiya, Distt. Raigarh, chhattisgarh.

27. State of Chhattisgarh, Through Collector, Raigarh, District Raigarh, Chhattisgarh.

---Respondents/Defendants

For Appellants	:- Mr. Awadh Tripathi, Advocate
For Respondents	:- Mr. Amit Sharma, Advocate
For State	:- Mr. Anshuman Rabra, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

27/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellants/plaintiffs under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which trial Court dismissed the suit of the plaintiffs on merit as well as holding that the suit is barred by limitation.

2.Mr. Awadh Tripathi, learned counsel for the appellants/plaintiffs would submit that the trial Court as well as the first appellate Court have committed grave legal error in dismissing plaintiffs' suit for declaration of title holding it to be barred by limitation and also on merits by recording a finding which is perverse and contrary to the record, as such, the appeal deserves to be admitted by formulating substantial question of law for determination.

3.The suit property shown in Schedule '1' appended with the plaint was partitioned between the parties as they are related to each other by the order dated 10/01/1984 passed by the Tahsildar under Section 178 of the Chhattisgarh Land Revenue Code, 1959 against which the plaintiffs preferred an appeal before the S.D.O., Raigarh which stood dismissed by order dated 31/01/1986. Plaintiffs further preferred an appeal against the order of the S.D.O. but that too, was dismissed by order dated 04/02/1993 (Ex. D/2) passed by the Commissioner and meanwhile, on 22/10/1991, plaintiffs filed a bare suit for declaration of title that they along with defendants No. 24 to 26 are the title and possession-holders of the suit property.

Thereafter, by amendment dated 15/10/2001, plaintiffs also pleaded that orders passed by the revenue officers regarding partition are arbitrary and illegal.

4. Defendants, by way of filing their written statement, not only disputed the title and pleaded the partition of the suit property by order of the Tahsildar affirmed by the S.D.O., but also stated that the suit is barred by limitation, therefore, it deserves to be dismissed.

5. Learned trial Court framed as much as five issues and upon consideration of oral and documentary evidence on record dismissed the suit on merits as well as on the ground of limitation holding that the for partition of the suit property was passed by the Tahsildar under Section 178 of the Land Revenue Code on 10/01/1984 which was affirmed by the S.D.O. and reaffirmed by the Commissioner, but the suit was filed by the plaintiffs on 22/10/1991, as such, it is barred by limitation. On appeal being preferred, learned first appellate Court upheld the judgment and decree passed by the trial Court and dismissed the appeal of the plaintiffs against which this second appeal has been preferred.

6. Plaintiffs' suit was for bare declaration of title and though they have also questioned collaterally the order passed by the revenue officers, but they have not specifically challenged the order dated 10/01/1984 passed by the Tahsildar affirmed by the S.D.O. and reaffirmed by the Commissioner.

7. Taking the challenge as it is, it is not in dispute that the suit property was partitioned in exercise of the provisions contained under Section 178 of the Land Revenue Code by order dated 10/01/1984 passed by the Tahsildar affirmed by the S.D.O. vide order dated 31/01/1986 in the appeal preferred by the plaintiffs.

8. At this stage, it would be appropriate to notice Article 58 of the Limitation Act, 1963, that applies to the suit for declaration which states as under :-

58	To obtain any other declaration	Three years	When the right to sue first accrues.
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9. 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).

10. 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 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."

11. In Daya Singh and another v. Gurdev Singh (dead) by LRs. and others⁴ relying upon C. Mohd. Yunus's case (supra) Their Lordships of the Supreme Court have held that mere existence of adverse entry in

¹ AIR 1961 SC 808

² AIR 1980 SC 335

³ AIR 1930 PC 270

⁴ (2010) 2 SCC 194

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.

12. Similarly, in the matter of **Khatari 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 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."

13. 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, it is quite vivid that the order dated 10/01/1984 of the Tahsildar passed under Section 178 of the Land Revenue Code was challenged by the plaintiffs in an appeal before the S.D.O. stood dismissed by order dated 31/01/1986, yet the plaintiffs filed the suit for bare declaration of title on 22/10/1991 which is after the period of three years as right to sue and right to file the suit has already accrued in favour of the plaintiffs on 10/01/1984 when the order for partition was passed by the Tahsildar or at least on 31/01/1986 when the order of the Tahsildar was affirmed by the revenue appellate Court (S.D.O.). The suit ought to have been brought within a period of three years from that date as Section 58 of the Limitation Act mandates that the suit for declaration has to be brought within three years from the date when the right to sue first accrues. Even otherwise, by amendment incorporated on 15/10/2001 also, plaintiffs have

not sought for specific quashing of the order of Tahsildar passed on 10/01/1984 affirmed by the S.D.O. on 31/01/1986 and reaffirmed by the Commissioner on 04/02/1993.

14. At this stage, reference may be made to the decision rendered by the Supreme Court in this regard in the matter of Jugraj Singh and Anr. v. Jaswant Singh and Ors.⁶ Wherein in a similarly constituted fact, their Lordships of the Supreme Court have held that the order of the revenue Officer ought to have been questioned by the plaintiffs in order to get the relief of declaration otherwise, their suit is barred by Section 42 of the Specific Relief Act, 1877 (Section 34 of the present Act). Paragraph 11 of the report states as under :-

"11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration

without these specific reliefs. Indeed they had only to ask for the setting aside of the order. "

15. In view of the aforesaid legal analysis, it is quite vivid that both the Courts below have rightly held that plaintiffs' suit is barred by limitation and in the considered opinion of this Court, the suit is also barred by proviso to Section 34 of the Specific Relief Act as plaintiffs have not claimed specific invalidation of the order of partition dated 10/01/1984 passed by the Tahsildar affirmed by the order of the S.D.O. on 31/01/1986 and reaffirmed by the Commissioner on 04/02/1993 (Ex. D/2), as such, I do not find any merit in this appeal much less any substantial question of law for determination.

16. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge