

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 255 of 2007**

1. Anil Kumar Shukla, Aged about 55 years, S/o Bipin Bihari Shukla.

2. Banshi Satnami, Aged about 55 years, S/o Ghiriya.
Both Residents of Village Kumharkhan, Patwari Circle No. 3, P.O. Datrengi, Tahsil/Police Station Bhatapara, Distt. Raipur, Chhattisgarh.

--Appellants/Defendants No. 1 and 9

Versus

1. Bipin Bihari Shukla (died) through LRs. :-

(a) Smt. Mamta Dixit, Aged about 60 years, Wd/o Parasnath Dixit, R/o Harsh Agency, Raghunath Ganj, Katni, Tahsil/Distt. Katni, Madhya Pradesh.

2. Naveen Kumar Shukla, Aged about 45 years, S/o Bipin Bihari R/o Gandhi Mandir Ward, Bhatapara, P.S./Tahsil/P.O. Bhatapara, Distt. Raipur, Chhattisgarh.

– Plaintiffs

3. Mahesh Ram Kewat, Aged about 42 years, S/o Baisakhu.

4. SitaRam Kewat, Aged about 42 years, S/o Baisakhu.

5. Rameshwar Kewat, Aged about 36 years, S/o Baisakhu.

6. Shrawankumar Kewat, Aged about 34 years, S/o Baisakhu.

Respondents No. 3 to 6 R/o Village Kumharkhan, Patwari Circle No. 3, P.O. Datrengi,

Tahsil/Police Station Bhatapara, Distt. Raipur,
Chhattisgarh.

7. Smt. Sarojini, Aged about 57 years, W/o Naresh
Chandra Tiwari, R/o Sadar Bazar, Behind Kali
Mandir, Jabalpur, Madhya Pradesh.

8. Sadhu ram Kewat, Aged about 50 years, S/o
Bhakla.

9. Jhagru Ram Kewat, aged about 48 years, S/o
Bhakla.

Both R/o Village Semariya, Patwari Circle No. 2,
P.O. Deori, Tahsil/P.S. Bhatapara, Distt. Raipur,
Chhattisgarh.

10. Shanker Lal Satnami, Aged about 52 years, S/o
Ghiriya, R/o Village Kumharkhan. Patwari Circle
No. 3, P.O. Datrengi, Tasil /P.O. Bhatapara,
Chhattisgarh.

11. Shyamratan Satnami, Aged about 35 years, S/o
Samaru @ Jarha, R/o Village Datrengi, P.O.
Datrengi, P.S./Tahsil Bhatapara, Distt. Raipur,
Chhattisgarh.

12. Daulal Kewat, Aged about 50 years, S/o Amukh.

13. A. Desiram Kewat, Aged about 30 years, S/o
Bisambhar.

B. Shiv Kumar Kewat, Aged about 24 years, S/o
Bisambhar.

C. Durpati Bai, Aged about 58 years, Wd/o
Bisambhar Kewat.

14. A. Mannu Ram Kewat, Aged about 40 years, S/o
Surajbali.

B. Chhannu Ram Kewat, Aged about 38 years, S/o
Surajbali.

C. Chainu Ram Kewat, Aged about 36 years, S/o Surajbali.

D. Paras Ram Kewat, Aged about 34 years, S/o Surajbali.

E. Chaity Bai, Aged about 60 years, Wd/o Surajbali Kewat.

15. Keju Ram Kewat, Aged about 48 years, S/o Khamhan.

16. RamKhilawan Kewat, Aged about 48 years, S/o Khamhan.

Respondents No. 12 to 16 R/o Village Kumharkhan, Patwari Circle No. 3, P.O. datrengi, Tahsil /P.S. Bhatapara, Distt. Raipur, Chhattisgarh.

17. Dharam Lal Sahu, Aged about 55 years, S/o Lila Ram, R/o Village Datrengi, P.O. Datrengi, P.S. Tahsil Bhatapara, Distt. Raipur, Chhattisgarh.

18. Tiju Ram Kewat, Aged about 45 years, S/o ramhan.

19. Ramhan Kewat, Aged about 65 years, S/o Pachkaud.

20. Melu Ram Kewat, Aged about 42 years, S/o Ramhan.

21. Rameshwar Kewat, Aged about 38 years, S/o Ramhan.

22. Dukalha Kewat, Aged about 56 years, S/o Bisauha Ram.

23. Hira Lal Kewat, Aged about 45 years, S/o Duklha.

24. Anjor Das Satnami, Aged about 55 years, S/o Jhagru Ram.

Respondents No. 18 to 24 R/o Village Kumharkhan, Patwari Circle No. 3, P.O. Datrengi, Tahsil/P.S. Bhatapara, Distt. Raipur, Chhattisgarh.

25. Banshi Lal Verma, Aged about 55 years, S/o Anand Ram.

26. Bhagvani Verma, Aged about 58 years, S/o Anand Ram.

Respondents No. 25 and 26 R/o Village Amalidih, P.O. Datrengi, Patwari Circle No. 3, Tahsil Bhatapara, Distt. Raipur, Chhattisgarh.

27. State of Chhattisgarh, through Distt. Collector, Raipur, Chhattisgarh.

---Respondents

For Appellants	:- Mr. B.M. Rao, Advocate
For Respondents No. 1 & 2	:- Mr. Arjit Tiwari on behalf of Mr. Shailendra Shukla, Advocate
For State	:- Mr. Sanjeev Kumar Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

13/01/2020

1. This second appeal preferred by the appellants/defendants No. 1 and 9 was admitted for hearing on the following substantial question of law :-

“Whether both the Courts below were right in holding that the suit was within limitation ?”

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

2. Two plaintiffs namely Bipin Bihari and Naveen Kumar brought a suit for declaration of title stating *inter alia* that they are in joint possession of the suit land along with defendant No. 1 and the alienation made by defendant No. 1 in favour of other defendants vide sale deeds (Ex. P/9 to P/21) are not binding on them and defendant No. 1 be restrained from further alienating the suit land.

3. Defendant No. 1 filed his written statement and set up a plea that plaintiffs are not entitled for any relief as claimed by them and partition has already taken place in the year 1956, as such, extent of co-parcenary interest has already come to an end and moreover, plaintiffs' suit is time barred.

4. Learned trial Court, after appreciation of oral and documentary evidence on record, partly decreed the suit holding that plaintiffs are joint title-holders of the suit land with defendant No. 1 and restrained defendant No. 1 from further alienating the suit land against which plaintiffs preferred an appeal being partly aggrieved by the judgment and decree of the trial Court and

defendants also filed cross-objection with regard to the plea of limitation decided against him.

5. Learned first appellate Court allowed the appeal of the plaintiffs and decreed the suit in toto whereas dismissed the cross-objection of the defendants qua the plea of limitation assailing which this second appeal under Section 100 of the CPC has been preferred by defendants No. 1 and 9 in which one substantial question of law has been formulated qua limitation that has been set out in the opening paragraph of this judgment.

6. Mr. B.M. Rao, learned counsel for the appellants/defendants No. 1 and 9 would submit that both the Courts below are absolutely unjustified in not dismissing plaintiffs' suit on merits as the suit land was mutated in the name of defendant No. 1 in the year 1978 and the suit was filed as late as on 29/01/1999 averring that the cause of action arose in December, 1996, therefore, the suit was apparently barred by limitation, as such, the second appeal deserves to be allowed by answering the substantial question of law in favour of the defendants.

7. Mr. Arjit Tiwari, learned counsel for the respondents No. 1 and 2/plaintiffs would support the impugned judgment and decree and would submit 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, as such, both the Courts below have rightly rejected the plea of limitation raised by the defendants and rightly held that the suit is within limitation.
8. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
9. Both the Courts below have held that the suit land is held jointly by plaintiffs and defendant No. 1 and also held that sale deeds (Ex. P/9 to P/21) are not binding on them.
10. The suit was filed on 29/01/1999 averring that in the month of December, 1996, defendant No. 1 declared that he is the title-holder of the entire land and he would further continue to alienate the suit land as he has sold whereas he could not have alienated the suit

land in favour of defendants No. 2 to 26 without the consent of the plaintiffs which led to the filing of the suit by the plaintiffs for declaration of joint possession over the suit land.

11. Article 58 of the Limitation Act, 1963, 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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12. 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**).

13. 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.

1 AIR 1961 SC 808

2 AIR 1980 SC 335

3 AIR 1930 PC 270

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."

14. 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 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.

15. Similarly, in the matter of Khatris Hotels Private Limited and another v. Union of India and another⁵ the Supreme Court has considered

4 (2010) 2 SCC 194

5 (2011) 9 SCC 126

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."

16. Reverting to the facts of the present case in light of the aforesaid discussion, it is quite vivid that defendant No. 1 did not raise

any express plea of limitation except saying that the suit is barred by limitation with regard to which trial Court held that the suit is within limitation as the cause of action has arisen on 29/01/1999 when defendant No. 1 denied the plaintiff and declared that he is the title-holder of the suit land, which has been affirmed by the first appellate Court that the suit preferred was within limitation in the cross-objection preferred by the defendants.

17. The only argument raised by learned counsel for the appellants/defendants No. 1 and 9 before this Court is that since the mutation entry took place in the name of defendant No. 1 in the year 1978, therefore, the suit was barred by limitation and the suit should have been filed within three years from the date of mutation entry in the name of defendant No. 1. It has already been held in the aforesaid cases by their Lordships of the Supreme Court that mere mutation in the revenue record does not give rise to the cause of action for filing a suit for declaration under Article 58 of the Limitation Act, 1963, unless there has been a clear and unequivocal threat to

infringe the right claimed by the plaintiffs.

18. The plea raised by defendant No. 1 in paragraph 8 of the written statement is as vague as it can be. The said plea is only raised for namesake and no express and speaking plea was raised qua limitation in the suit which was filed by the plaintiffs wherein both the Courts below negatived the said plea of limitation raised by the defendants and decreed the suit of the plaintiffs, as such, both the Courts below have rightly held that plaintiffs' suit is within limitation. Consequently, the substantial question of law is answered in affirmative.

19. Lastly, it was pleaded that I.A. No. 3 be allowed and additional substantial question of law be formulated, but after hearing to learned counsel for the appellants/defendants No. 1 and 9, I do not find any good ground to entertain the said application and frame additional substantial question of law. Thus, I.A. No. 3 stands rejected.

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

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet