

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

SA No.97 of 1988

(From the judgment and decree dated 6.2.1988 passed by the learned District Judge, Mayurbhanj, Baripada in T.A. No.20 of 1985 reversing the judgment and decree dated 26.2.1985 passed by the learned Sub-Judge, Karanjia in T.S. No.19/4 of 1984/1981-I)

Raja Dei

....

Appellant

-versus-

Alta Bewa and others

....

Respondents

Advocate(s) appeared in this case:-

For Appellant : Mr. S.N. Mishra, Advocate

For Respondents : Mr. Somya Dev Ray, Advocate

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT
22nd December, 2022

B.P. Routray, J.

1. The Plaintiff, namely, Raja Dei is the present Appellant. She challenges the judgment and decree dated 6.2.1988 of the learned District Judge-cum-First Appellate Court, Mayurbhanj passed in Title Appeal No.20 of 1985, wherein the judgment and decree of the learned Sub-Judge, Karanjia passed in T.S. No.19/4 of 1984/1981-I was reversed only on the ground of limitation.

2. The substantial question involved in the present appeal is, whether application of law of limitation against the Plaintiff to prohibit

her to maintain the suit after 12 years of denial by the predecessor of the Defendants is sustainable?

3. The facts need to be described in a nut shell are that one Surumali Mohanta had four sons, namely, Suar, Laxman, Lachhu and Jayanath. Suar and Lachhu died unmarried without leaving any issue. Plaintiff is the daughter of Laxman through Nilamani (wife). The Defendants are the wife and children of Jayanath. The properties in dispute have been described in schedule 'A' of the suit, i.e. to the extent of 9 Mana 4 Guntha 1 Biswa and 12 Gandas under Khata No.101 of mouza-Sannai, Pragana Jashipur, Dist.-Mayurbhanj. In the settlement record, the suit schedule 'A' land have been recorded jointly in the names of Laxman and Jayanath earlier and subsequently the names of Defendant Nos.2 to 7 have been recorded.

4. The case of the Plaintiff is that, she is posthumous daughter of Laxman, who died in the year 1957. Her mother Nilamani (P.W.3) gave birth to her after 2/3 months of death of Laxman and Nilamani married to Laxman around 2 years before her birth. Subsequently Nilamani married to one Gangadhar. Though the Plaintiff in her early days resided at her maternal grand-father's house, but after 4/5 years she came and stayed with Jayanath. Jayanath, her paternal uncle, gave married to her in 1965. In the year 1966, the Plaintiff filed Mutation Case No.645/1966 before the Tahasildar praying for recording of half share of suit schedule 'A' properties in her name, which was rejected on 3.10.1966 by the Tahasildar on the ground that the Plaintiff was never in possession of the suit land.

5. Subsequently, present suit was filed in the year 1981 by the Plaintiff. The Defendants contested the same and their stand is that the Plaintiff is not the daughter of Laxman and Laxman died much prior to coming into force of the Hindu Succession Act, 1956. Besides, they also took the ground of non-joinder of necessary party as Nilamani was not arrayed as a party, and also the ground of limitation.

6. Learned Sub-Judge, Karanjia framed as many as ten issues and all the issues were answered in favour of the Plaintiff to decree the suit in her favour granting half share to her. The findings of the learned Sub-Judge, Karanjia given in favour of the Plaintiff and confirmed by the learned District Judge are that, the Plaintiff is the daughter of Laxman and Laxman died in the year 1957, i.e. after coming into force of the Hindu Succession Act, 1956 and that, Laxman died in jointness with Jayanath.

7. There is no dispute with regard to the status of the parties that they are Hindus and governed by Hindu Mitakshara School of Law.

8. In the opinion of the learned District Judge, there is a clear denial to the title and possession of the plaintiff over the suit schedule 'A' properties by Jayanath in the written objection filed by him before the Tahasildar in Mutation Case No.645/1966. In the objection petition of Jayanath, which was filed on 3.10.1966, he has specifically denied so stating that the Plaintiff had neither any title under law nor was she in possession of the properties and after death of Laxman, he

(Jayanath) became the sole heir and successor of all properties of Surumali. Learned District Judge further opined that on the date of filing of the suit, the Plaintiff was more than 21 years old and by operation of Section 6 and 8 of the Limitation Act, the right of the Plaintiff is deemed to have been barred being more than 12 years had passed from the date of filing of such objection in the mutation case by Jayanath. In other words, as per learned District Judge, the suit having been filed after 12 years counted from 3.10.1966 when the Plaintiff had the knowledge of express denial of her title and possession over the suit land by Jayanath, and more than three years of her attaining majority she cannot maintain the suit to enforce her right of preemption.

9. With regard to non-joinder of Nilamani in the suit, no serious objection was raised and according to the opinion of both the trial courts and first appellate court, she (Nilamani) having been married to another person after death of Laxman and after giving birth to the Plaintiff, her right does not survive in the joint family properties of Laxman and secondly, she never prayed for such right before the court despite being examined as P.W.3.

10. The admitted case of the parties is that they are Hindus and governed by Mitakshara School of Law and the unchallenged finding is that the Plaintiff is the daughter of Laxman. Laxman is the elder brother of Jayanath. The Plaintiff was in her mother's womb on the date of death of Laxman and Jayanath married 4/5 years after the death of Laxman. It is admitted that Defendant No.1-Alata Bewa is the wife

of Jayanath and Jayanath died in the year 1980. Therefore, the status of the Plaintiff and Jayanath as well as all the Defendants after Jayanath, as co-sharers of the Hindu Joint Family Property is not denied. So the question arises here for determination is that, can plaintiff's right as a co-sharer of Jayanath and his successors is barred by limitation?

11. It is true that possession in Hindu Joint Family Property by one co-sharer is in the eye of law, possession of all and passage of time does not extinguish the right of co-owner who is out of possession of the joint property except in the event of ouster or abandonment. In the context of a co-sharer in a joint property, his right and possession would not amount to ouster unless there is a clear declaration that his title and possession as a co-sharer is denied and disputed. The court in a given situation based on the pleadings and evidences may come to the conclusion that such a plea of ouster in respect of the other party is existing or not. In the instant case as discussed by the learned District Judge in paragraph 8 of his judgment regarding the pleading of denial taken by the Defendants ousting the title and possession of the Plaintiff remains undisputed. Looking to the LCR, it is seen that the Defendants have not only claimed exclusive possession, which is one of the necessary ingredients to satisfy the right of prescription against the Plaintiff, by making statements in their depositions which is found supporting from the Plaintiff's evidence, but also they have clearly pleaded in their objection-petition filed in the mutation case to expressly deny the title and possession of the Plaintiff. It is also not disputed that though at the time of filing of the mutation case in 1966 the deceased was a minor, but at the time of filing of the suit in the

year 1981, the Plaintiff was more than 21 years. Section 8 of the Limitation Act is generally treated as an exception to Section 6 and 7 of the said Act. It is explained by the Supreme Court in the case of ***Darshan Singh and others vs. Gurdev Singh, (1994) 6 SCC 585*** that, in each case the litigant is entitled to a fresh starting period of limitation from the date of cessation of disability subject to the condition that in no case the period extended by this process under Section 6 or 7 (of the Limitation Act) shall exceed three years from the date of cessation of the disability. Here in the case at hand, the extended period of three years excepted under Section 8 of the Limitation Act has undoubtedly lapsed in view of her declaration on age in the plaint. Therefore, as held by the learned District Judge to conclude that the Plaintiff's right is barred by limitation is confirmed.

12. In view of the discussions made above, no reason is found to interfere with the impugned judgment and decree. The appeal is accordingly dismissed.

(B.P. Routray)
Judge

B.K. Barik/Secretary