

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

135

RSA-2331-1988 (O&M)
Date of Decision: 07.03.2024.

RASOOLA AND OTHERS

.....APPELLANTS

VS

SULTAN AND OTHERS

...RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Virk, Advocate for the appellants.

Mr. Naveen S. Bhardwaj, Advocate
for respondent
Nos. 14,15,21,22,26,27,28,39,43, 56,59,67 and 69.

ANIL KSHETARPAL, J. (ORAL)

1. In this Regular Second Appeal, the defendant assails the correctness of judgment and decree passed by the First Appellate Court, which in turn, has reversed the judgment and decree passed by the trial Court. The party shall be referred to by their status in the suit.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff filed a suit for grant of decree of declaration and possession claiming that the suit property has come to their share in the partition proceedings which resulted in instrument of partition on 23.08.1972 issued by Assistant Collector First

Grade. The defendant while contesting the suit claimed that the suit property cannot be partitioned and the instrument of partition has been obtained at their back. The trial Court decided all issues in favour of the plaintiff, however, dismissed the suit on the ground that it was filed beyond the period of 12 years from the date of issuance of the instrument of the partition.

3. In the first appeal, the First Appellate Court has held that the suit was filed within the period of limitation as prescribed in Article 65 of the Schedule attached to the Limitation Act, 1963.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with requisitioned record of the trial Court which is available on the website.

5. Learned counsel representing the appellant contends that the suit was filed on 31.12.1984, whereas the instrument of partition was issued on 23.08.1972. Hence, the suit was filed beyond the prescribed period of limitation.

6. On the other hand, learned counsel representing the respondent submits that defendant has never claimed that they have become owners of the property in dispute by way of adverse possession. He submits that the suit of the plaintiff is based on title, and therefore, the period of limitation will begin to run when the defendant claimed adverse possession.

7. This Court has considered the submission of the learned counsel representing the parties. For the sake of clarity Article 65 of the Limitation Act, 1963 is extracted hereunder:

“Description of suit	Period of limitation	Time from which period begins to run
“65. For possession of immovable property	Twelve years	When the

<i>or any interest therein based on title.</i> <i>Explanation.—For the purposes of this article—</i> <i>(a)where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</i> <i>(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</i> <i>(c)where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.”</i>		possession of the defendant becomes adverse to the plaintiff.
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8. From the careful reading of Article 65, it is evident that the limitation period for filing a suit for possession of property based on title shall begin to run from the date where possession of the defendant becomes adverse to the plaintiff. In this case the defendants have failed to prove when their possession became adverse to the plaintiff.

9. In view of the aforesaid facts and discussion, there is no error in the judgment passed by the First Appellate Court. Hence, the present appeal stands dismissed.

(ANIL KSHETARPAL)
JUDGE

07.03.2024
pry

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No