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**Court :** Karnataka

**Decided On :** Oct-11-1961

**Reported in :** AIR1963Mys1; ILR1962KAR161

**Judge :** H. Hombe Gowda, ; K.S. Hegde and ; B.M. Kalagate, JJ.

**Acts :** Limitation Act, 1908 - Schedule - Articles 142 and 144

**Appeal No. :** Second Appeal No. 418 of 1954

**Appellant :** Lingamma

**Respondent :** Putte Gowda and anr.

**Advocate for Def. :** E.S. Venkataramiah, Adv. for Respondent 1 and ; H.F.M. Reddy, Adv. for Respondent 2

**Advocate for Pet/Ap. :** V. Krishnamurthy, Adv.

**Judgement :**

**K.S. Hegde, J.**

1. The following questions of law are referred by a Bench consisting of the learned Chief Justice and Hombe Gowda, J., to the Full Bench for decision as per Order dated 12-12-1960:

1. Is the person who files a suit for possession entitled to succeed unless he shows, in addition to title, that he has been in possession of the property within 12 years of the suit?

2. Whether a case, in which it is proved that the plaintiff or his predecessor has not been in possession at all, is governed by Article 142 or Article 144 of the Limitation. Act (to be referred to as the 'Act' hereinafter)? and

3. When a plaintiff seeks to eject persons from immovable property claimed by him on the ground that although they entered into such property as tenants, were in wrongful possession thereof but fails to prove that the defendants had entered into the property in such permissive character, is he bound to show that he or some of the persons under whom he claims have been in possession of the property within 12 years before suit? These questions are closely interconnected; in fact they are several facets of one question. The questions as referred are abstract questions of law. To decide these questions, we have to proceed on the basis that the plaintiff has title to the suit property, but he has failed to establish his possession, actual or constructive, within 12 years from the date of the suit. We have to assume further that the plaintiff having taken the plea that the defendant was his tenant has failed to establish the tenancy pleaded. We are told that these questions still remain to be decided by the Bench hearing the appeal. For our purpose, we shall proceed on the assumptions mentioned above.

2. The controversies about the true scope of Article 142 had been quietened years back by the decisions of the several High Courts till it was reopened recently by the decision of this Court in *Basanna v. Appa Rao*, AIR 1959 Mys 227. All the High Courts in India had uniformly taken the view that a plaintiff who sues on the basis of his title, has not only to prove his title, but also his possession within 12 years from the date of the suit. This reference became necessary in view of the decision in *Basanna's case* AIR 1959 Mys 227.

3. Before proceeding to examine the decisions on the subject, we shall first go to the language used in Article 142. Article 142 speaks of suits for possession of immovable property when the plaintiff while in possession of the property, has been either dispossessed or has discontinued his possession. Article 144 is a

residuary Article. It relates to suits for possession of immoveable property or any interest therein not otherwise specifically provided in the 'Act'. It is quite clear, nor is it disputed, that Article 144 can only apply to cases which are not governed by any other article in the 'Act'. In the present case the controversy centres round Articles 142 and 144, No other Article is relevant for our purpose. Therefore, we have to first see whether the questions formulated could be reasonably brought within the ambit of Article 142.

In a case where dispossession or discontinuance of possession is either admitted or proved, there is no difficulty. But difficulty arises where no specific evidence is available about dispossession of the true owner or his discontinuing his possession. What then is the position? In the absence of evidence to the contrary, the true owner of the property must be deemed to have been in possession of the property. The dictum possession follows title is well known and well recognised by Courts. Therefore, when a person establishes his title to the property, law presumes that either he or his predecessor-in-title was deemed to have been in possession of the property, at some point of time. If the plaintiff either admits or it is proved that he was not in possession of the suit property at the time of the institution of the suit, then necessarily he must have either been dispossessed or he must have discontinued his possession at some point of time prior to the suit. 'Dispossession' occurs where the possession of the true owner is taken away by a third party. 'Discontinuance' of possession relates to a case where a true owner consciously gives up his possession and some third party gets into possession. For the reasons mentioned already, every suit for possession based on title attracts to itself the mischief of Article 142. If a person having title to the property sues for possession of the suit property on the allegation that the defendant was his tenant but fails to establish the tenancy pleaded, then it follows that he must have either been dispossessed or that he had discontinued his possession prior to suit. Where a plaintiff pleads permissive possession and the defendant admits his possession but denies that he is in permissive possession (in either case the defendant's possession being admitted) if the plaintiff fails to establish his case, then it follows that the defendant's possession was without the consent of the plaintiff. From the time the defendant holds the property without the consent of the plaintiff, then the plaintiff must be deemed to have been dispossessed. In such a

case, law requires the plaintiff to establish that he was in possession of the suit property within 12 years from the date of the suit. Otherwise, his rights get barred under Article 142.

4. This takes us to the decisions cited at the Bar. Decisions on the points in controversy are legion-There is no need to refer to all of them. We shall examine the views of the several High Courts and also those cases which throw some new light, on the subject.

5. Before proceeding to discuss the decisions on the points in question, it is necessary to notice that at one time there was a view that the question whether Article 142 or Article 144 applied to the facts of a given case depended on the allegations made in the plaint. This view has been now definitely negated by a chain : of decisions of different High Courts. It is now well settled that the plaintiff cannot be allowed by skilful drafting of the plaint to evade the inconvenient Article; the decision as to the applicability of the particular Article must necessarily depend on the proved or admitted facts. See: *Ahobala Sastry v. Cheluvegowda*, 29 Mys LJ 141, *Sangam Lal v. Ganga Din* : AIR1946 All389 , and *Bhindhyacnana v. Ram Chand* : AIR1934 All993 .

6. Till the decision of this Court in *Basanna's case*, AIR 1959 Mys 227, all the High Courts were unanimous in holding that the plaintiff is not entitled to succeed unless he shows in addition to his title to the property, that he or his predecessor-in-title was in possession of the suit property within 12 years of the suit. See: *Official Receiver of East Godavari v. C. Govindaraju*, AIR 1940 Mad. 798 (FB), 29 Mys LJ 141; : AIR1934 All993 , *Bai Ganga v. Baheramshah Dalal* AIR 1947 Bom 300; *Gopaul Chunder v. Nilmoney Mitter* ILR 10 Cal 374, and *Chandiprasad v. Awadh Narain Jha*, : AIR1952 Pat143 .

7. But *Sri V. Krishnamurthi*, the learned Counsel for the appellant, has invited our attention to three decisions which had taken the contrary view. The first decision cited by him is the one in *Jai Chand v. Girwar Singh*, ILR 41 All 669 : AIR 1919 All 403(2). Therein It was held that on the defendant's plea of adverse possession the onus lay on him to establish the adverse possession pleaded and it is not for the plaintiff to prove his possession within 12 years. But the ratio of that decision was

not followed in the Full Bench decision in Bindhyachal Chand's case, : AIR1934 All993 . Dealing with the decision in Jaichand's case, ILR 41 All 669 : AIR 1919 All 403 (2), Sulaiman, C. J. who wrote the leading judgment in Bindhayachal Chand's Case : AIR1934 All993 , observed that in that case there was a presumption that the plaintiff therein, who was a Zamindar, had both title to the suit property and that he was in possession of the same; therefore the defendant who had set up adverse possession against him had to prove adverse possession for the statutory period. Though the Full Bench did not specifically over-rule the decision in Jai Chand's Case ILR 41 All 669 : AIR 1919 All 403 (2), the ratio of that decision definitely did not find favour with the Full Bench. The Allahabad High Court in its later decisions has not followed the decision in Jaichand's Case: ILR 41 All 669 : AIR 1919 All 403 (2). See: : AIR1946 All389 .

8. Next reference was made to Vasudeo Atmaram v. Eknath Balkrishna, ILR 35 Bom 79. We do not think that this decision is of any assistance to the appellant. In that case the Court found as a fact that the possession of the person who claimed adversely to the true owners was really on behalf of the plaintiffs who. were minors, she having been their de facto guardian. The only other decision cited in support of the contention of the plaintiff is the recent decision of this Court in Basanna's Case AIR 1959 Mys 227. In that case it was held :

'Article 142 emphasises 'while in possession of the property plaintiff has been dispossessed or has discontinued possession'. Where the plaintiff's suit is based on title and not on possession or discontinuance of possession and the cause of action is based upon an order of the Court holding that the plaintiff is not in possession, there cannot be any question of 'while in possession', he was dispossessed. As such the case of the plaintiff does not come within the purview of Article 142 of the Limitation Act. The Article that is applicable is Article 144 -- the residuary Article.

Where in such a case the defendant has not proved his adverse possession, for more than 12 years the suit is maintainable.'

(As summarised in the head note). There is no reference to decided cases in Basanna's case, AIR 1959 Mys 227. The Court proceeded solely on the basis of

the language of the Article, which we have considered already. The view taken in that case is opposed to the decisions of all the High Courts including that of the Old Mysore High Court. That decision has unsettled the settled law. As observed in *Adinaranappa v. Mallamma*, AIR 1950 Mys 13:

'We would like to add one other reason for being reluctant to change the view already taken by this Court. As observed by Reilly, C. J. in 40 Mys H. C. R. 435:

'When there is nothing in view of the law adopted in such a case which is in itself unjust or opposed to the public interest and the case was decided many years ago so that it is not improbable that many transactions have been made in the light of that decision, It would be improper to re-open such a question by a reference to a Full Bench and so possibly create confusion and unsettlement.'

Thus the principle of stare decisis stares us in the face.'

That principle applies with greater force to the points under consideration in, this appeal. For well over a quarter of century the Courts in India have been taking consistent view about the position of the law involved in this case. There are no compelling reasons to take a different view. We accordingly overrule the decision in AIR 1959 Mys 227.

9. The second question of law formulated for our decision is but a facet of the first question. Our answer to that question is found in our earlier discussion. Nothing more need be said.

10. Now coming to question No. 3, the general principles enunciated earlier apply with equal force to this question as well. Further, several Courts have taken the view that when the plaintiff's allegation that the defendant was in permissive possession of the suit property is not established, the allegation in question amounts to an admission of discontinuance of plaintiff's possession and therefore, his case falls under Article 142. See : AIR 1946 All 389 ; and. 29 Mys LJ 141. This appears, to be the correct view both in principle and on authority.

11. In the result, our decision on question No. 1 is that the plaintiff has to prove not only his title to the suit property but also his possession of the same within twelve

years of the suit; on question No. 2 we hold that the relevant Article is Article 142 of the 'Act'; and on question No. 3, we hold that the plaintiff, who seeks to eject persons from immoveable property claimed by him, on the ground that although they entered into such property as tenants, were in wrongful possession thereof but fails to prove his allegations has to establish his possession within 12 years of the suit.

12. Now the appeal will go back to the Division Bench for disposal according to law in the light of the decision in this reference.

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