

Mehar Ali Vs. Kalut

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Court : Allahabad

Decided On : Apr-22-1963

Reported in : AIR1964All377

Judge : Mithan Lal, J.

Acts : Limitation Act, 1908 - Sections 28 - Schedule - Article 47; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : Second Appeal No. 12 of 1960

Appellant : Mehar Ali

Respondent : Kalut

Advocate for Def. : Mohd. Baqar Usmani, Adv.

Advocate for Pet/Ap. : Sripat Narain Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Mithan Lal, J.

1. I have heard learned counsel for the parties. Sri Sripat Narain Singh, learned advocate for the appellant, has raised two contentions in this appeal. The first is that Article 47 of the Indian Limitation Act did not apply to a suit for joint

possession while his second contention is that the lower appellate court went wrong in observing that the right of the plaintiff as a bhumidhar was extinguished or that the defendant had become a sole bhumidhar.

2. Briefly stated the facts are that the plaintiff claimed relief for a joint possession as a co-bhumidhar of the land in dispute on the allegations that the plots were joint tenancy of the parties from the time of their ancestors and that the parties became joint Bhumidhars of these plots on the enforcement of the U. P. Zamindari Abolition and Land Reforms Act. In the former litigation between the parties the revenue court held that the plaintiff was a joint tenant and as wrong entries continued the present suit was brought. The defence was that the defendant was the sole bhumidhar and in any case the suit was barred by limitation.

3. Both the courts below have held that Rajab All and Kalut, were joint tenants of the plots in dispute. The trial court further held that the parties were co-bhumidhars but the court passed a decree in favour of the appellant only for joint possession and not for an injunction. The lower appellate court came to the conclusion that the present suit having been filed more than three years after the orders in proceedings under Section 145 Cr. P. C. the suit was barred by limitation. It has further been observed towards the close of the judgment that the plaintiff is not a co-bhumidhar while the defendant is the sole bhumidhar. It is against these findings that the present appeal has been filed by the plaintiff and two contentions have been raised on behalf of the appellant.

4. So far as the question of bar of limitation under Article 47 of the Limitation Act goes the learned counsel for the appellant has relied upon the cases of Bhaguji v. Aniaba, ILR 5 Bom. 25 and Jogesh Chandra v. Suresh Chandra 163 Ind Cas 370 (Cat) and contended that Article 47 has no application to cases of co-sharers. Both these cases have been discussed in the Calcutta case of Khaleque Newaz Khan v. Labibuddin Ahmad Siddique : AIR 1943 Cal 67. The Division Bench of the Calcutta High Court held that the suit for joint possession by a co-owner, bound by an order passed under Section 145, Cr. P. C. maintaining the exclusive possession of one co-owner is governed by Article 47 of the Limitation Act. That court further held that failure to institute a suit within three years of that order entails the extinguishment of

his right, whatever the nature of the right may have been by reason of Section 28, Limitation Act. A learned single Judge of this court in the case of Mt. Jaidevi Kuari v. Dakshini Din : AIR1937 All300 held that the phraseology of Section 28 and Article 47 of the Limitation Act is clear and unambiguous. If a co-sharer, against whom an order under Section 145 Cr.P. C. has been passed fails to bring a suit within the period of three years, his right to the property or possession thereof is extinguished by virtue of Section 28 of the Limitation Act. It was further observed at page 303 that the right which is extinguished is the right which the person against whom the order is passed had in the property, whether the right be as a sole owner or the right be to have joint possession with the person in whose favour the order is passed. I with respect agree with this view. The Judicial Commissioner of Nagpur also took a similar view in the case of Jagat Ram v. Pitai AIR 1930 Nag 142.

5. It was contended by the learned counsel for the appellant that the expression 'to recover the property' used in Article 47 of the Indian Limitation Act envisages a right to claim exclusive possession and not a right to recover joint possession. I do not find any ground for such a distinction. The said expression in the context in which it has been used in the said Article cannot be deemed to exclude a suit by a co-sharer against another co-sharer for joint possession. The expression is wide enough to include both the rights, that is his right to recover the property exclusively or his right to claim a decree for joint possession. This expression will include every suit for enforcement of such rights as the person bringing the suit had in the property. The first contention of the learned counsel for the appellant that Article 47 of the Limitation Act does not apply to a suit for joint possession cannot, therefore, be accepted. The Article is applicable to suits for joint possession as well. In the instant case the order of the Magistrate was passed on 30th December 1948 while the suit was instituted on 30th January 1956, that is long after three years. It was barred by Article 47 of the Indian Limitation Act and the learned Civil Judge was right in refusing to grant the plaintiff a decree.

6. So far as the other argument of the learned counsel relating to the extinguishment of the plaintiff's right as a co-bhumidhar goes, it does not appear necessary to make any observation in this behalf, firstly because Section 28 of the

Limitation Act only bars the remedy and secondly because bhumidhari right has been considered to be a new right accruing from the abolition of the zamindari under the U. P. Zamindari Abolition and Land Reforms Act. I do not mean that the plaintiff's right as a bhumidhar still continues nor it is the intention to say that it does not continue because if the plaintiff has any such right to institute a suit for partition or to claim a decree for separation of his bhumidhari share it is open to him to get this matter agitated through a separate suit, if so, advised. The present suit being a suit for joint possession and for injunction and such a suit being barred by Article 47 of the Limitation Act, the second question does not at all arise.

7. In the result the appeal fails and is dismissed with costs.

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