

Durga Charan Sen Vs. Sen and ors.

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Court : Kolkata

Decided On : Jun-17-1885

Reported in : (1885)ILR11Cal680

Judge : Richard Garth, C.J. and ;Ghose, J.

Appellant : Durga Charan Sen

Respondent : Sen and ors.

Judgement :

Richard Garth, C.J.

1. The only point in this case, upon which we had any doubt, was with regard to limitation.

2. 1The suit was brought by the plaintiff to recover possession of a one-third share of a property, which consisted of the dwelling house of the defendants Nos. 8, 9 and 10. There is no doubt that this house formed part of the joint family property of a Hindu family, of which there were several co-sharers. The plaintiff was not one of the family, but bought the share in question on the 17th of Pous 1288 from one Shiba Durga, who was the widow and sole heiress of Ram Moni, who was one of the co-sharers.

3. So far as the plaintiff's title is concerned, the lower Appellate Court has found in his favour. But it was contended, on the part of the defendants, that the plaintiff is

barred by limitation.

4. The defendants say that, after the death of Ram Moni, which occurred some 25 or 30 years ago, Shiba Durga left her husband's house, and has since lived with her father.

5. But the Subordinate Judge says that this of itself does not show that she was excluded from the joint family property; and he has held that the plaintiff, who purchased the property from her, is as much entitled to the benefit of Article 127 of the Limitation Act as Shiba Durga would have been. That article provides that 'a suit brought by a person, excluded from joint-family property, to enforce a right to share therein, must be brought within twelve years from the time when the exclusion becomes known to the plaintiff.' The Subordinate Judge considers that this rule not only applies to members of the joint family but to any stranger who may purchase a share in the joint property from any member of the family.

6. That is not, in my opinion, the intention of Article 127; and I think that any stranger purchasing joint-family property from a member of the family is in the same position as regards limitation as the purchaser of any other property.

7. Under Article 136 'the purchaser of a property, when the vendee was out of possession at the time of the sale, must sue to recover it within twelve years from the time when his vendor was first entitled to possession.' If then the plaintiff purchased when his vendor was out of possession, he comes within that Article 136; if his vendor was not out of possession when he purchased, the question of limitation does not arise.

8. I conceive that in Article 127 the Legislature intended to make an exception from the general rule of limitation in favour of Hindus and others, to whom the law of joint-family property more specially applies in this country.

9. Those persons often leave their houses for long periods of time to seek employment in some distant place, and their relatives may take steps to exclude them from their family property without their knowing it. It has, therefore, been considered right to allow them to bring a suit under such circumstances to enforce

their right within twelve years from the time when they first know of their exclusion.

10. But this reasoning would not apply with equal force to strangers, who purchase joint-family property, and ought to make enquiries into the title of their vendors before they make their purchase.

11. That Article 127 does not apply to such persons is shown, I think, by the fact that the limitation is to run from the time when the exclusion becomes known to the plaintiff. Now, who is meant by the plaintiff in this sentence? The plaintiff there, I conceive, must mean the member of the joint family who has been excluded from possession, and the expression would not be applicable to a person purchasing from such member. If it was intended to apply to a purchaser from that member, this strange result would follow: that the member of the joint family who sold to the stranger might have known of his own exclusion more than twelve years before the stranger brought his suit, and yet the stranger would not be barred if he, the stranger (who would be the plaintiff), was not aware of the exclusion of his vendor. The stranger would then have twelve years to sue from the time when he was first aware of the exclusion.

12. The Subordinate Judge in this case appears to have considered that the onus is upon the defendants, in the first place, to show when Shiba Durga was excluded from possession; and in the next place, to show that the plaintiff heard of the exclusion within twelve years before suit. I think this is wrong. The plaintiff, in my opinion, is bound to show, that he brought his suit within twelve years from the time when Shiba Durga was excluded from possession; and consequently from the time when she was first entitled to bring a suit to recover it. It may turn out, of course, that Shiba was never excluded from possession; and in that case the plaintiff may be in time. But the issue which the lower Court will have to try is this, whether Shiba was excluded from possession, and, if so, when, and the onus will be upon the plaintiff to show that she was excluded, if at all, within twelve years before this suit.

13. The case will be remanded for retrial upon this point, and both parties will be entitled to adduce further evidence upon it. The costs in both Courts will abide the result.

Ghose, J.

14. I concur in the judgment delivered by my lord. I desire to add that the article of the Limitation Act truly applicable to this case is No. 144 of Schedule II, and in this view it will be necessary for the lower Appellate Court to determine when did the possession of the defendant become adverse to the plaintiff or the person under whom he claims by purchase. Whether the case is dealt with under Article 144 or Article 136 referred to in the judgment of the Chief Justice, the enquiry will be one and the same, viz., when was Shiba Soondari excluded.

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