Vasantha (Dead) Thr. L.R. vs Rajalakshmi @ Rajam (Dead) Thr. Lrs. on 13 February, 2024

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Bench: Sanjay Karol, Hrishikesh Roy

2024 INSC 109 RE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3854 OF 2014

VASANTHA (DEAD) THR. LR. …APP

Versus

RAJALAKSHMI @ RAJAM (DEAD) THR.LRs. …RESP

JUDGMENT

[SANJAY KAROL, J.

1. The action that set in motion the instant dispute was in the year 1947, when a mother transferred property inherited at the death of her husband, in one form to her two sons and in another, to her daughter. Some forty-odd years later, the daughter's husband filed a suit in respect of such property, in 1993. The Additional District Munsiff1 decided the matter in 1999. The Additional District and Session Judge2 returned a decision on the First Appeal in 2002. The Second Appeal was decided by the High Court3 in 2012. It is against this order and judgment in Second Appeal that the present civil appeal has been preferred. "Trial Court" "First Appellate Court" "Impugned judgment"

1| Civil Appeal No. 3854 of 2014 BACKGROUND FACTS

2. It would be necessary to advert to the facts underlying the present dispute.

3. On 10th July 1947, one Thayammal executed a settlement deed4 granting rights in her property to her two sons namely Raghavulu Naidu and Chinnakrishnan @ Munusamy Naidu5 for their lives and thereafter to the former's two daughters namely Saroja and Rajalakshmi (present Respondent now represented through LRs). Saroja pre-deceased Thayammal as also her father and uncle, in 1951.

3.1 Subsequently, Raghavulu and Munusamy executed a Settlement Deed dated 31st July 19526 reverting the said interests in the properties back to their mother.

3.2 Thayamma, soon thereafter, executed a further Settlement Deed7 dated 18th August 1952, bequeathing absolute interest in such properties only in favour of her two sons namely Raghavulu Naidu and Munusamy Naidu, with the consequence of extinguishing the rights, if any, of Saroja and Gopalakrishnan. 3.3 Munusamy had no children. His wife Pavunammal enjoyed life interest in the property bequeathed to her husband. They had an adopted daughter, Vasantha (present Appellant, now represented through LRs). 3.4 In 1993, during the lifetime of Pavunammal, Gopalakrishnan (Husband of Saroja) filed a suit, subject matter of the present lis, praying for a declaration as "First Settlement Deed" "Munusamy" "Second Settlement Deed" "Third Settlement Deed"

2| Civil Appeal No. 3854 of 2014 the owner of the properties since he was the sole heir of Saroja in terms of the First Settlement Deed.

4. It is in this brief background of facts that the dispute entered the courts. It would be useful to have a summary of family relations forming the backdrop of, and parties to, the dispute by way of a chart, as immediately hereunder:-

> • Pounamma is also referred to as Pavanuammal at some places, as was so done by the Courts below.
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> PROCEEDING BEFORE THE TRIAL COURT A. PLAINT
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> 5. Plaintiff (Gopalakrishnan) filed a suit for declaration and to establish his vested rights and interest in the property.
>
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5.1 It was urged that only the First Settlement Deed had legal sanctity. Accordingly, the wife of Munusamy is only entitled to possession and enjoyment till her lifetime. There is no right of transfer in her favour. 5.2 The Second Settlement Deed is only for the lifetime of Thayammal, and the same would not impact the vested right created in favour of deceased Saroja, inherited by Gopalakrishnan, as her husband and sole heir. 5.3 The adoption of Vasantha is illegal. Also, the vested right in favour of Saroja was created prior to such adoption and, therefore, would not affect the rights of Gopalakrishnan.

B. WRITTEN STATEMENT

6. The written statement is of denial of all claims made by Gopalakrishnan. 6.1 It is incorrect to state that the two sons Raghavulu and Munasamy, were in possession of suit properties according to the First Settlement Deed. No claim of any vested rights can be accepted.

6.2 The claim that Gopalakrishnan is the sole legal heir of Saroja, cannot be accepted as after her death in the year 1951, he has remarried and relocated to Pondicherry.

6.3 Even if the First Settlement Deed is accepted as genuine, then Pavanuammal alone would be the heir to such properties. 6.4 Munasamy had, during his lifetime, on 7th October, 1976 executed a settlement deed in favour of Pavanuammal without any coercion. The patta of the said property was also transferred in her name.

4| Civil Appeal No. 3854 of 2014 6.5 Since Munasamy and Pavanuammal did not have any children, they adopted a child namely Vasantha. Pavanuammal of her own volition executed a settlement deed in favour of Vasantha on 19th July, 1993. Any denial of the same cannot be accepted.

6.6 On 18th August 1952, Thayammal had vide the Third Settlement Deed given exclusively, the suit properties to her two sons who have made separate and individual deeds in regards to their shares and sold portions thereof to other parties. The suit suffers from non-joinder of necessary parties.

C. FINDINGS

7. The Learned Additional District Munsif framed four following issues to be considered:

a) Whether the settlement deed suggested by the plaintiff is genuine?

b) Whether the plaintiff cannot claim any right in the suit property?

c) Whether the plaintiff is entitled to get the relief prayed in the plaint?

d) What are the relief for which plaintiff is entitled to?

7.1 Placing reliance upon the deposition of PW1 (Gopalakrishnan), the first issue was decided in favour of the plaintiff and the First Settlement Deed was upheld as genuine. Also, DW1 (Vasantha) in her deposition had not completely denied the execution and genuineness of First Settlement Deed. After considering both, the First and the Second Settlement Deeds, it held that Raghavulu Naidu and Munusamy Naidu must have executed the Second Settlement Deed in favour

5| Civil Appeal No. 3854 of 2014 of Thayammal as the Second Settlement Deed could not be executed without the first deed having been in existence.

7.2 In regard to the second issue, it was observed that plaintiff himself has admitted the execution of Second Settlement Deed and that possession was handed over to Thayammal. Plaintiff has not taken any action in respect of the document executed in the year 1974 and filed the suit in the year 1993 and held that the suit is barred by Limitation and the rights of the plaintiff were abated. 7.3 The third and fourth issues were decided against the plaintiff since he cannot claim any rights in the suit property, therefore, the declaration cannot be made in respect of one-half of the defendant's share in the suit property after her lifetime would come to the plaintiff.

PROCEEDING BEFORE THE FIRST APPELLATE COURT

8. Two following questions were considered by the First Appellate Court:

a) Whether the plaintiff is the legal heir of Saroja Ammal?

b) Whether the plaintiff is entitled for the share in the suit property?

8.1 It was held that the plaintiff has never taken any steps to revoke various transactions that have taken place in regard to the suit properties. He was also unaware about the real possession of the properties in question. Further, it was observed that the plaintiff failed to prove dispossession within a period of twelve years, i.e. the time period within which the claim of adverse possession has to be made.

6| Civil Appeal No. 3854 of 2014 8.2 In the above terms, the judgment and decree of the Trial Court was confirmed and the appeal was dismissed.

PROCEEDING BEFORE THE HIGH COURT

9. The High Court under Second Appeal framed the following substantial questions of law:

a) Whether in law the courts below are right in failing to see that under Section 19 of the Transfer of Property Act, a vested interest is not defeated by the death of the transferee before the possession.

b) Whether in law the courts below are not wrong in omitting to see that the matter in issue would be squarely covered by the illustrations (i) and (iii) of Section 119 of the Indian Succession Act?

c) Whether in law the courts below are right in failing to see that a limited interest owner could not prescribe title by adverse possession as held in AIR 1961 SCC 1442?

9.1 Having taken note of various decisions, the learned Single Judge held that the interest vested in Saroja was full and not life interest. Therefore, upon her death,, the interest does not revert to the settlor. In other words, that Saroja died before her interest stood fructified, is an incorrect statement. It is only the right of enjoyment that stood postponed till the life interest of Raghavulu Naidu and Munusamy Naidu.

9.2 On the question of limitation, it was observed that the documents executed between Thayammal, her sons and subsequently, Pavanummal and Vasantha, were only in respect of life interest i.e. a limited right. The other two deeds of

7| Civil Appeal No. 3854 of 2014 settlement executed after the First Settlement Deed are against or beyond the competency of the executants and therefore, not binding on the plaintiff. That being the

case the requirement of twelve years within which to initiate a suit, does not arise. Further, it was held that since, in the suit, the life estate holder has been impleaded in the suit and Gopalakrishnan had the option of filing the suit even after her lifetime, the same is not barred by limitation. 9.3 It was in such terms that it was held that according to the First Settlement Deed the plaintiff will be entitled to half share of the property after the lifetime of Vasantha, a life estate holder.

SUBMISSIONS

10. We have heard at length, Mr. Dama Seshadri Naidu, learned senior counsel for the Appellants and Mr. V. Ramasubramanian, learned counsel for the Respondents. The main contentions urged have been recorded as under:-

A. APPELLANTS

(i) It is submitted that all questions raised in this Appeal are pure questions of

law and in accordance with Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari(3-Judge Bench)8 and National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad(2-Judge Bench)9, a question of law can be raised at any stage.

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(ii) It is urged that the original plaintiff (Gopalakrishnan) lacked a cause of action. Since the suit was filed while Pounammal was alive, even if his right is termed as 'vested', the same does not become enforceable till her death. In other words, till 2004 no right stood accrued in favour of the plaintiff. Reference was made to Fateh Bibi v. Char an Dass (3-Judge Bench)10. Further, upon such rights having accrued, no application to amend the plaint was filed. Any which way, if he had by amendment, sought the relief of possession, it would be as if an entirely new cause of action is sought to be introduced amounting to substitution, which ought not to be allowed. Reference was made to M/s Ganesh Trading Co. v. Moji Ram(2-Judge Bench)11.

(iii) As per Section 34 of the Specific Relief Act, 196312 the declaration of a right or status is a matter of discretion. However, the proviso restricts the application of such discretion in terms that it is not to be exercised when the complainant seeks only a declaration of title when he is able to seek further relief. Reference is made to Ram Saran & Anr. v. Ganga Devi (3-Judge Bench)13, Vinay Krishna v. Keshav Chandra & Anr. (3-Judge Bench)14 and UOI v. Ibrahim Uddin (2-Judge Bench)15.

(iv) It is submitted that Article 65 Explanation (a) read with Section 27 of the Limitation Act, 1963 hits the right of Gopalkrishnan. Succession to the estate only (1970) 1 SCC 658 (1978) 2 SCC 91 "SRA, 1963" (1973) 2 SCC 60 (1993) Supp 3 SCC 129 (2012) 8 SCC 148

9| Civil Appeal No. 3854 of 2014 accrues on the death of the life estate holder which was in 2004. Till date, no suit stands filed. The learned senior counsel relied on Goplakrishna (Dead) Through LRs v. Narayanagowda(Dead) Through LRs(2-Judge Bench) 16.

(v) It is argued that the right of Saroja created as per the First Settlement Deed was in fact a contingent interest. It states that if Munusamy has a male heir then one half will belong to him and Saroja will get the other half after the life of Raghavulu and Munusamy. Therefore, on her death in 1951, her interest was spes successionis i.e. it did not achieve concrete form and is only an expectation of succeeding. The contingency upon which Saroja's interest rests is two-fold; Munusamy either having or not having children. If he does, they would get half share; if he doesn't then two eventualities exist: half of Munusamy's share goes to Saroja upon his death, and the other half after the life interest of Pavunammal is exhausted, goes to Saroja, the remainder woman. Reliance is placed on Harmath Kaur v. Inder Bahadur Singh17. Further, reliance is placed on Mahadeo Prasad Singh18 to state that when there is an expectation simpliciter of succession, neither a transfer nor a contract to transfer is permissible.

(2019) 4 SCC 592

AIR 1922 PC 403

AIR 1931 PC 1989

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B. RESPONDENTS

(i) The fact that the First Settlement Deed was acted upon i.e. the rights given to two sons of Thayammal were returned to her by a subsequent deed in 1952, shows that the first one gave rights in presenti. Therefore, in Saroja rests a 'vested' right as per Section 19 of the Transfer of Property Act, 1882 19, a vested right once accrued cannot be defeated by the death of the transferee prior to possession. Reference is made to Sreenivasa Pai v. Saraswathi Ammal(2- Judge Bench)20.

(ii) The Second Settlement Deed reverting the life interest awarded to the two sons only gives Thayammal a life interest and therefore subsequent settlement deeds were non est in law and thus need not be challenged.

(iii) So far as the non-seeking of relief within twelve years is concerned, it is submitted that the possession of the property was only available to Gopalkrishnan upon the death of Pavunammal (in 2004). Since a suit is pending, the limitation for seeking possession is arrested. The plea of adverse possession will be applicable only if the possession with the opposing party had become adverse on the date of the plaint. The learned counsel relies on Tribhuvan Shankar v. Amrutlal (2-Judge

Bench)21.

“TPA” (1985) 4 SCC 85 (2014) 2 SCC 788

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(iv) The enjoyment of the property bequeathed on Raghavulu and Munusamy was in the nature of life interest. The Second Settlement Deed, therefore, is hit by Section 6(d) of TPA. They cannot convey a better title than they have received.

(v) None of the conditions mentioned in Section 126, TPA for revocation/suspension of settlement are met in the present case, meaning thereby that the settlement cannot be revoked.

(vi) Since the title to the properties stood vested in Saroja, Gopalakrishnan had cause of action to file a suit for declaration. The reason for filing of the suit in 1993 is a settlement deed executed by Pavunammal in favour of Vasantha. Since the former was alive the suit was filed without seeking the relief of possession. It is submitted that the proviso uses the term ‘further relief’ which implies that such relief had to be available on the date of filing the plaint which it was not as possession rested with Pavunammal therefore, a suit only for declaration was maintainable on the date of filing.

(vii) Reliance on Section 213 of the Indian Succession Act, 1925 is misconceived as the same is only applicable to wills covered by Section 57 (a) and (b) of the said Act i.e wills executed within the local limits of the civil jurisdiction of the High Courts of Bombay and Madras. QUESTIONS FOR OUR CONSIDERATION

11. Various contentions have been canvassed by either party to the dispute. However, if this Court is to decide those issues, two questions must be considered at the threshold. They are:-

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(i) Whether Gopalakrishnan’s suit for declaration based on the First Settlement Deed, eventually filed in the year 1993 barred by limitation?

(ii) Whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963?

To emphasise, we restate that if the answer to the aforementioned questions is in the affirmative, we need not refer to the other contentions raised across the bar. ANALYSIS & CONSIDERATION ISSUE 1

12. The provisions of the Limitation Act, 1963 relevant to the instant dispute, i.e, Section 27 and Articles 58 and 65 of the First Schedule to the Act, are reproduced hereinbelow for ready reference:-

"27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Art.	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration.	Three years	When the right to sue first accrues.
65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

Explanation.- For the purposes of this article--

(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;..."

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13. We notice that before us, are different interpretations of when the limitation period would expire thereby making the possession of the suit property, hostile to the rights supposedly vesting in Gopalakrishnan, as the heir of Saroja upon whom, the First Settlement Deed vested a right in the property. The learned Trial Court observed that, given the contention of the original plaintiff (Gopalakrishnan) that the Second Settlement Deed was invalid, he ought to have challenged the transfer caused thereby within 12 years of such date. Further, it was observed that another possibility of challenge arose in 1974 when Munasamy executed a settlement deed in favour of Vasantha and subsequently in 1976, when another deed was executed in favour of his wife, Pavanuaamal, his daughter. On both these occasions, the heir of the alleged vested interest of Saroja, was silent. Therefore, on both counts the suit filed by Gopalakrishnan was barred by limitation. The First Appellate Court agreed with this reasoning.

14. On the other hand, the learned senior counsel for the Appellants has contended, if at all, Gopalakrishnan has a right in the disputed property, then the period of limitation for establishing the adverse possession of Vasantha began in the year 2004 upon the death of the life estate holder i.e, Pavanuaamal, then by 2016 Vasantha had perfected the title by adverse possession. Since no suit for recovery of possession stands filed till date, Gopalakrishnan's claim today is barred by limitation.

15. The question before us is, from when will the period of limitation run, for Gopalakrishnan to

stake a claim on the properties?

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16. If the period of limitation is to run from the date of the Second Settlement Deed, then the rights should be extinguished in 1964. If the same were to run from either 1974 or 1976, then after 1986 or 1988 respectively, Gopalakrishnan had no right in the property on the plea of adverse possession.

17. We notice that this Court in Gopalakrishna (supra) had observed that a reversioner ordinarily must file a suit for possession within 12 years from the death of the limited heir or widow. That metric being applied to the instant facts, it is after the death of Pavunammal, that the reversioner, or in this case the heir of the reversioner (Gopalakrishnan) ought to have filed the suit. The suit, the subject matter of appeal before us is a suit for declaration simpliciter and not possession. So, the possession still rests with heir of Pavunammal. The twelve-year period stood expired in 2016 (with the death of Pavanummal in the year 2004) therefore, in our considered view, the suit is barred by limitation, which was filed in 1993.

18. The learned counsel for the respondents contended that since the suit stood filed in respect of the property, the clock for adverse possession stopped ticking. He relied on Tribhuvanshankar (supra) to buttress this claim.

19. A perusal of the said decision shows a reference has been made to Sultan Khan v. State of MP22 to hold that if a suit for recovery of possession has been filed then the time period for adverse possession is arrested. The instant decision is distinguishable from the current set of facts on two grounds: one, that the 1991 MP LJ 81

15| Civil Appeal No. 3854 of 2014 holding of the Madhya Pradesh High Court was in respect of Section 248 of the MP Land Revenue Code and had been referenced in an appeal arising from the State of MP itself; two, in the present facts, Gopalakrishnan has filed only a suit for declaration and not one for possession. The said declaration suit was filed in the year 1993. It was after the death of Pavunammal (in 2004) that the relief of possession became available to him. However, no such relief has been claimed. This decision does not in any way support the claim of the respondents.

20. In Saroop Singh v. Banto (2-Judge Bench)23, this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on Karnataka Board of Wakf v. Govt. of India (2-Judge Bench)24, it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show : (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed. A person pleading (2005) 8 SCC 330 (2004) 10 SCC 779

16| Civil Appeal No. 3854 of 2014 adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

21. This Court in Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan (2-Judge Bench)25, reiterating the observations made in P.T. Munichikkanna Reddy v. Revamma (2-Judge Bench)26 in respect of the concept of adverse possession observed that efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which, right to access the court expires through efflux of time. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of property for the time specified by the statute under a claim of right or colour of title.

22. In Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn.27, (2-Judge Bench) while discussing the object of Limitation Act, this Court opined that:

> (2009) 16 SCC 517 (2007) 6 SCC 59 (1971) 2 SCC 860
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> 17| Civil Appeal No. 3854 of 2014 " ....The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary.

A statute prescribing limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asseting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bare the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute, prescribing the

limitation extinguishes the right, it affects substantive rights while that which purely pertains to the commencement of action without touching the right is said to be procedural....” (Emphasis Supplied)

23. Part III of the Schedule to the Limitation Act details the time period within which the declarations may be sought for: (a) declaration of forgery of an instrument either issued or registered; (b) declaring an adoption to be invalid or never having taken place; and (c) to obtain any other declaration. Point (c) or in other words Article 58 governs the present dispute. This Court has in Shakti Bhog Food Industries Ltd. v. Central Bank of India28, (3-Judge Bench) taken note (2020) 17 SCC 260

18| Civil Appeal No. 3854 of 2014 of Article 58 of the Limitation Act 1963 vis-a-vis Article 113(Any suit for which no period of limitation stands provided in the Schedule) and observed that the right to sue accrues ‘from the date on which the cause of action arose first’. In the present case, the suit for declaration was filed in 1993. This implies that the cause of action to seek any other declaration i.e. a declaration of Gopalakrishnan in the property, should have arisen only in the year 1990. There is nothing on record to show any cause of action having arisen at this point in time. The possible causes of action would be at the time of the Second Settlement Deed (1952) or Munusamy’s deed of settlement in favour of Pavunammal(1976) or at the time of Pavunammal’s vesting of the property in favour of Vasantha (1993) or at the death of Pavunammal (2004) where apart from declaration, he ought to have sought the relief of possession as well. It is clear from the record that on no such possible occasion, a declaration was sought, much less within the stipulated period of three years.

ISSUE II

24. We now proceed to examine whether the suit for declaration simpliciter was maintainable in view of Section 34 of the SRA, 1963.

25. Section 34 reads as:

> 34. Discretion of Court as to declaration of status or right.-
>
> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
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> > 19| Civil Appeal No. 3854 of 2014 Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.
> >
> > (Emphasis Supplied)

26. The learned senior counsel for the appellant has contended that it has been settled by the Courts below that the appellant has been in possession of the subject property since 1976. In view of the proviso to Section 34, the suit of the plaintiff could not have been decreed since the plaintiff sought for mere declaration without the consequential relief of recovery of possession.

27. The learned counsel for the Respondent, in rebuttal, contended that since at the time of filing of the suit, the life interest holder was alive, she was entitled to be in possession of the property and therefore, the Plaintiff not being entitled to possession at the time of institution of the suit, recovery of possession could not have been sought.

28. We now proceed to examine the law on this issue. As submitted by the learned senior counsel for the Appellant, in Vinay Krishna v. Keshav Chandra (2-Judge Bench)29, this Court while considering Section 42 of the erstwhile Specific Relief Act, 1877 to be pari materia with Section 34 of SRA, 1963 observed that the plaintiff's not being in possession of the property in that case ought to have amended the plaint for the relief of recovery of possession in view of the bar included by the proviso.

1993 Supp (3) SCC 129

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29. This position has been followed by this Court in Union of India v. Ibrahim Uddin (2-Judge Bench)30, elaborated the position of a suit filed without the consequential relief. It was observed:

> "55. The section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.
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> 56. In Ram Saran v. Ganga Devi [(1973) 2 SCC 60] this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of the Specific Relief Act, 1963 and, thus, not maintainable. In Vinay Krishna v. Keshav Chandra [1993 Supp (3) SCC 129] this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also Gian Kaur v.

Raghubir Singh [(2011) 4 SCC 567)

57. In view of the above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief.

58. In the instant case, the suit for declaration of title of ownership had been filed, though Respondent 1-plaintiff was admittedly not in possession of the suit property. Thus, the suit was

barred by the provisions of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same."

30. In Venkataraja and Ors. v. Vidyane Doureradjaperumal (Dead) thr. LRs (2-Judge Bench)31, the purpose behind Section 34 was elucidated by this Court. It was observed that the purpose behind the inclusion of the proviso is to prevent multiplicity of proceedings. It was further expounded that a mere declaratory decree remains non-executable in most cases. This Court noted that (2012) 8 SCC 148 (2014) 14 SCC 502

21| Civil Appeal No. 3854 of 2014 the suit was never amended, even at a later stage to seek the consequential relief and therefore, it was held to be not maintainable. This position of law has been reiterated recently in Akkamma and Ors. v. Vemavathi and Ors. (2-Judge Bench)32.

31. This Court in Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar v. Chandran and Others (2-Judge Bench)33 while reversing the High Court decree, observed that because of Section 34 of the SRA, 1963, the plaintiff not being in possession and claiming only declaratory relief, ought to have claimed the relief of recovery of possession. It was held that the Trial Court rightly dismissed the suit on the basis that the plaintiff has filed a suit for a mere declaration without relief for recovery, which is clearly not maintainable.

32. That apart, it is now well settled that the lapse of limitation bars only the remedy but does not extinguish the title. Reference may be made to Section 27 of the Limitation Act. This aspect was overlooked entirely by the High Court in reversing the findings of the Courts below. It was not justified for it to have overlooked the aspect of limitation, particularly when deciding a dispute purely civil in nature.

33. Adverting to the facts of the present case, on a perusal of the plaint, it is evident that the plaintiff was aware that the appellant herein was in possession of 2021 SCC Online SC 1146 (2017) 3 SCC 702

22| Civil Appeal No. 3854 of 2014 the suit property and therefore it was incumbent upon him to seek the relief which follows. Plaintiff himself has stated that defendant no. 1 was in possession of the subject property and had sought to transfer possession of the same to defendant no.2, thereby establishing that he himself was not in possession of the subject property. We are not inclined to accept the submission of the learned counsel for the respondent on this issue. We note that after the death of the life-estate holder in 2004, there was no attempt made by the original plaintiff to amend the plaint to seek the relief of recovery of possession. It is settled law that amendment of a plaint can be made at any stage of a suit34, even at the second appellate stage35.

34. In view of the above, the second issue is answered in the favour of the Appellants herein and against the Respondent.

CONCLUSION

35. As evidenced from the discussion hereinabove, the judgment impugned before us fails scrutiny at the threshold stage itself, i.e. on limitation as also maintainability of the suit. This being the case, the judgment of the Trial Court in O.S. No. 726 of 1993 as also the First Appellate Court in S.C. Appeal Suit 47/99 FTC-II Appeal Suit 113/2002 which dismissed the suit of Gopalkrishnan on the grounds of limitation cannot be faulted with.

36. The impugned judgment in Second Appeal No. 1926 of 2004 dated 27th September 2012 titled as Gopalakrishnan & Anr. v. Vasantha & Ors. is set Harcharan v. State of Haryana, (1982) 3 SCC 408 (2-Judge Bench) Rajender Prasad v. Kayastha Pathshala, (1981) Supp 1 SCC 56 (2-Judge Bench)

23| Civil Appeal No. 3854 of 2014 aside. The appeal is allowed in the above terms. Pending application(s) if any, shall stand disposed of. The holding in the judgments of the Learned Trial Court as also the First Appellate Court are restored.

.....J. (HRISHIKESH ROY) .....J. (SANJAY KAROL) NEW DELHI;

February 13, 2024.

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