

Narayan vs Babasaheb & Ors on 5 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1666, 2016 (6) SCC 725, 2016 (3) ABR 496, 2016 (2) AJR 601, AIR 2016 SC (CIVIL) 2194, (2016) 3 PAT LJR 12, (2017) 1 MAH LJ 29, (2017) 1 MPLJ 62, (2016) 2 KER LJ 570, (2016) 4 ICC 91, (2016) 2 JLJR 363, (2016) 3 ALL WC 2579, (2016) 4 CALLT 89, (2015) 4 GAU LT 700, (2016) 3 MAD LJ 378, (2016) 2 CIVILCOURTC 743, (2016) 132 REVDEC 88, (2016) 3 SCALE 661, (2016) 1 WLC(SC)CVL 730, (2016) 4 CIVLJ 495, (2016) 122 CUT LT 103, (2016) 2 MARRILJ 104, (2016) 2 KER LT 465, (2016) 4 MAD LW 570, (2016) 4 ALLMR 481 (SC), (2016) 2 CLR 1020 (SC), (2016) 3 CAL HN 102, (2016) 2 CURCC 1, (2016) 2 CGLJ 523, (2016) 116 ALL LR 433, (2016) 3 JCR 26 (SC), (2016) 161 ALLINDCAS 59 (SC), (2016) 3 ANDHLD 217, (2016) 2 RECCIVR 914, (2016) 2 ALL RENTCAS 1, 2016 (2) KCCR SN 169 (SC), (2017) 5 BOM CR 267

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Bench: Madan B. Lokur, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3486 OF 2016
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 15966 OF 2012

NARAYAN		... APPELLANT
	VERSUS	
BABASAHEB & ORS.		... RESPONDENTS

J U D G M E N T

N.V. RAMANA, J.

Leave granted.

2. The appellant is before us aggrieved by the Judgment and decree passed by the High Court of Bombay, Bench at Aurangabad, dated 5.10.2011 in Second Appeal No.213 of 2004 wherein and whereby the High Court has confirmed the judgment and decree of the Courts below.

3. This Court, while issuing notice on 27th April, 2012, has passed the following order:

“Delay condoned.

Issue notice returnable in ten weeks limited to the question as to whether the Suit filed in the year 1989 with regard to the sale deed dated January 20, 1982 was within limitation.

Dasti, in addition to the ordinary process.

In the meanwhile, the parties shall maintain status quo with regard to the property which is subject matter of the sale deed dated January 20, 1982.”

4. In the light of the order passed by this Court on 27.04.2012, we are confining ourselves only to the question as to whether the Suit filed in the year 1989 in respect of a sale deed dt. 20.01.1982 is well within limitation or barred by limitation.

5. The appellant before us is the 1st defendant in the Suit. Respondents 1 to 5 are the plaintiffs and the 6th respondent is defendant no.2. For the purpose of convenience, the parties are referred as they are before the trial Court.

6. The brief facts which are necessary for proper appreciation of the dispute between the parties in nutshell are as follows:

The plaintiff/respondents 1 to 5 filed Reg. Civil Suit No.12 of 1989 against the 1st defendant (appellant herein) and 2nd defendant (respondent No. 6). The Suit was filed seeking the relief of partition and for a declaration that the sale deed dated 20.01.1982 and 28.11.1988 executed by defendant No.2 in favour of defendant No.1 are not binding and to set aside the same and also for recovery of possession of the Suit schedule property and for mesne profits.

7. The brief averments of the plaint are that the plaintiffs 1 and 2 are the real brothers and the 2nd plaintiff, being minor, is under the guardianship of plaintiff No.1. Plaintiff Nos.3 to 5 are the real sisters, whereas defendant No.2 is their mother and the defendant No.1 is the purchaser in whose favour defendant No.2 alleged to have executed the sale deeds dated 20.01.1982 and 28.11.1988 which are sought to be set aside and defendant No.3 is another sister who is married about 12 years back and whose whereabouts are not known to the plaintiffs. The 3rd defendant is later impleaded.

8. It is the specific case of the plaintiffs that their father is the original owner of the Suit schedule property which is ancestral property. He died in the year 1972 leaving behind him his two sons, four

daughters and the widow i.e. the 2nd defendant. After the death of their father, the 2nd defendant, who is alleged to be a person of loose character, left the matrimonial home and married one Begaji. The father of the plaintiffs, during his lifetime, performed the marriage of plaintiff Nos.3 and 4 and the marriage of the 5th plaintiff was performed by the 1st plaintiff. The 2nd defendant, without there being any legal necessity, has alienated the property for a meager amount of Rs.6,000/- when the surrounding lands were fetching an amount of Rs.15,000/-. At the time of execution of the second sale deed, though the 1st plaintiff was major, he was shown as minor. It is stated that as the 2nd defendant was never taking care of them at any point of time and staying with some other person, she cannot be termed as a guardian. The 1st defendant, without paying any consideration, in active connivance with the 2nd defendant, has got the sale deed registered with an intention to defraud the interest of the minors. It is further pleaded that as on the date of execution of the second sale deed, the land fetches an amount of Rs.20,000/- per acre, apart from that as the 1st defendant is in possession of the property, they are entitled to mesne profits at the rate of Rs.2,000/- per annum from the date of taking over possession by the 1st defendant till the date of recovery of possession.

9. The defendants filed the written statement resisting the claim of the plaintiffs by denying the averments in the plaint and put forth their case stating that the 2nd defendant sold the Suit schedule property for the purpose of legal necessity. She had the responsibility of getting her daughters married, maintaining the large family and under those circumstances she was compelled to sell the property and further the consideration received was also adequate and as such the sale deeds are binding on the plaintiffs. The 2nd defendant took the objection that one of her daughters was not made as a party to the Suit as such Suit requires to be dismissed for non-joinder of proper and necessary parties and accordingly sought for dismissal of the Suit.

10. Later the 3rd defendant was arrayed as a party to the Suit and in spite of the best efforts by the plaintiffs, the notice could not be served and it was reported that her whereabouts are not known for more than ten years. No written statement was filed on her behalf.

11. The trial Court, after a full-fledged trial, has come to the conclusion that under Section 11 of the Hindu Minority and Guardianship Act, 1956 (for short 'the 1956 Act') the sale made by the de facto guardian of the minor is void ab initio and is incapable of subsequent clarification in the absence of evidence to show that the transfer is made for legal necessity. Hence, the sale deeds are not binding on the plaintiffs and accordingly decreed the Suit holding that the plaintiffs are entitled to partition and separate possession of their share. Plaintiffs 1 and 2 are entitled to 7/12th share and plaintiffs 3 to 5 are entitled to 1/24th each and the 2nd defendant is entitled to 7/24th share and plaintiffs are entitled for mesne profits.

12. Assailing the said judgment and decree, the 1st defendant has filed RCA.No.120/1991 on the file of the District Judge, Parbhani. The issue of limitation was raised by the defendants before the 1st appellate court contending that the Suit is barred by limitation as per Article 60 of the Limitation Act, 1963 (for short 'the Act') and as on the date of filing of the Suit, except the 2nd plaintiff (Waman), all other plaintiffs are majors and hence the Suit ought to have been instituted within three years as envisaged by Article 60 of the Act. It is further urged that the legal disability of 2nd plaintiff (Waman) does not entitle other plaintiffs to institute the Suit after the prescribed period in

the Act and relied upon Section 7 of the Act. As per the cause title in the plaint, as on the date of filing of the Suit, the 1st plaintiff was aged 20 years, the 2nd plaintiff was minor and plaintiffs 3, 4 and 5 were aged 29, 27 and 25 years respectively. Basing on the contentions, the appellate Court has come to the conclusion that Article 60 of the Act is not applicable to the facts of the case as the 2nd defendant is not the guardian appointed by the Court. Therefore, Article 109 of the Act, which prescribed 12 years is applicable where the alienation made by the father of the ancestral property by the Hindus who are governed by the Mitakshara law and hence the Suit filed in the year 1989 is well within limitation. But however, the appellate court has modified the decree to the extent that the 1st defendant is entitled to the share of the 2nd defendant.

13. The unsuccessful and unsatisfied 1st defendant has approached the High Court of Bombay, Bench at Aurangabad by way of Second Appeal No.223/2004. The High Court has dismissed the appeal holding that Article 109 of the Act applies to the alienation made by the mother and Article 60 of the Act does not apply to the facts of the case and its application altogether is in a different eventuality and Section 109 of the Act applies to the facts of the case and the Suit is well within limitation. Against the said order, the present appeal is filed before this Court.

14. We are not inclined to go into any of the factual issues or otherwise which has attained finality and we are restraining ourselves to the limited question whether the Suit filed in the year 1989 for setting aside the sale deed dated 20.01.1982 is governed under which Article of the Limitation Act and whether the same is within limitation or not?

15. We have heard the learned counsel on either side and given our anxious consideration to their submissions, to the relevant provisions of the Act and the material placed before us.

16. It is argued on behalf of the appellant/1st defendant that a challenge to the sale deed dated 20.01.1982 is barred by limitation as Article 60 of the Act applies to the facts of the case and the limitation is 3 years. It is contended by him that the Courts below have erroneously applied Article 109 and further Article 109 applies to cases where alienation was made by the father but in the case on hand, alienation was made by the mother. He further submitted that the interpretation of Articles under the Act is against the settled principles of interpretation of statutes and when a provision is provided exclusively which deals with alienation made by father, the Courts below were not right in applying the same to the alienation made by the mother. It is for the first time contended before the Court that Article 110 of the Act applies but the provision will be applied only once the sale deed dated 20.01.1982 is set aside and sought for allowing the appeal.

17. On the other hand, the learned counsel appearing on behalf of the respondents/plaintiffs has urged that Article 60 is applicable to cases where guardian sells exclusive property of minor but not joint family property. Further the residuary clause has no application as it will apply only when there is no other Article provided under the Act and he further stated that the case of the plaintiffs squarely falls under Article 110 of the Act and as such the Suit filed by the plaintiffs is well within the limitation and sought for dismissal of the appeal.

18. In the light of the submission made by the counsel, before we proceed to deal with the main issue, it is appropriate to have a look at Section 7, Articles 60, 109, 110 and 113 of the Act which read as follows:

Section 7 : Disability of one of several persons:

Where one of several persons jointly entitled to institute a Suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all; but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Explanation I: This section applies to a discharge from every kind of liability, including a liability in respect of any immovable property;

Explanation II: For the purpose of this section, the manager of a Hindu undivided family governed by the Mitakshara law shall be deemed to be capable of giving a discharge without the concurrence of the other members of the family only if he is in management of the joint family property.

Articles 60, 109, 110, 113 of the Act:-

60. To set aside a		
transfer of property		
made by the guardian		
of a ward	Three years	When the ward
		attains majority.
(a) by the ward who		
has attained		
majority;	Three years	
(b) by the ward's		
legal	Three years	
representative-		When the ward
		attains majority.
(i) When the ward		
dies within three		
years from the date		
of attaining		When the ward dies.
majority;		
(ii) When the ward		
dies before		
attaining majority.		
109. By a Hindu	Twelve years	The date of the
governed by		dispossession or
Mitakshara law to		discontinuance.

set aside his			
father's alienation			
of ancestral			
property.			
110. By a person		When the exclusion	
excluded from a	Twelve years	becomes known to the	
joint family		plaintiff.	
property to enforce			
a right to share			
therein.			

|113. Any Suit for |Three years |When the right to | |which no period of | |sue
accrues. | |limitation is | | |provided elsewhere | | |in this Schedule. | | |

19. Before we venture to discuss the applicability of Section 7 of the Act which deals with disability of one of several persons, we have to bestow our attention to the Articles which are applicable to the facts of the case.

20. In the case on hand, there cannot be any dispute about the fact that after the death of the 2nd defendant's husband automatically the 2nd defendant becomes a natural guardian to her children. On this, the finding of the lower appellate court, that as she was not the guardian appointed on the day to alienate the Suit schedule property therefore Article 109 of the Act applies which gives 12 years limitation from the day the alienee takes possession of the property and the alienation made by the father of ancestral property of the Hindus who are governed by Mitakshara law, and that the Suit is well within limitation, cannot be sustained.

21. Even the High Court has proceeded on the same notion that Article 60 of the Act applies where the ward files a Suit after attaining majority, for setting aside transfer of property made by his guardian when he was minor.

22. The High Court has further observed that under Article 109 of the Act, a long rope is given to file the Suit to the plaintiff than a Suit filed by the plaintiff under Article 60 of the Act and the case of the plaintiff strictly falls under Article 109 of the Act.

23. A bare reading of Section 8(1) of the 1956 Act indicates that it empowers the natural guardian to do all the acts which are necessary or reasonable or proper for the benefit of the minor. Section 8(2)(a) of the 1956 Act prescribes that either the purchaser or the seller should obtain the permission of the District Court to transfer the property by sale.

24. Hence, the present transaction on the face of it is in contravention of the mandatory provisions laid down by the 1956 Act.

25. When once a transaction takes place in the name of the minor which is in contravention of the 1956 Act and which is not done for legal necessity, such transaction is voidable and unless such a

transaction is sought to be impeached or set aside, the question of recovery of possession of that property does not arise.

26. A close analysis of the language of Article 60 would indicate that it applies to Suits by a minor who has attained majority and further by his legal representatives when he dies after attaining majority or from the death of the minor. The broad spectrum of the nature of the Suit is for setting aside the transfer of immovable property made by the guardian and consequently, a Suit for possession by avoiding the transfer by the guardian in violation of Section 8(2) of the 1956 Act. In essence, it is nothing more than seeking to set aside the transfer and grant consequential relief of possession.

27. There cannot be any doubt that a Suit by quondam minor to set aside the alienation of his property by his guardian is governed by Article 60. To impeach the transfer of immovable property by the Guardian, the minor must file the Suit within the prescribed period of three years after attaining majority.

28. The Limitation Act neither confers a right nor an obligation to file a Suit, if no such right exists under the substantive law. It only provides a period of limitation for filing the Suit.

29. Hence, we are of the considered opinion that a quondam minor plaintiff challenging the transfer of an immovable property made by his guardian in contravention of Section 8(1)(2) of the 1956 Act and who seeks possession of property can file the Suit only within the limitation prescribed under Article 60 of the Act and Articles 109, 110 or 113 of the Act are not applicable to the facts of the case.

30. The High Court as well as the Trial Court erred in applying Article 109 of the Act, where Article 109 of the Act clearly speaks about alienation made by father governed by Mitakshara law and further Courts below proceeded in discussing about the long rope given under Article 109 of the Act and comparatively lesser time specified under Article 60 of the Act. It is well settled principle of interpretation that inconvenience and hardship to a person will not be the decisive factors while interpreting the provision. When bare reading of the provision makes it very clear and unequivocally gives a meaning it was to be interpreted in the same sense as the Latin maxim says “*dulo lex sed lex*”, which means the law is hard but it is law and there cannot be any departure from the words of the law.

31. Hence, in view of our above discussion, the limitation to file the present Suit is governed by Article 60 of the Act and the limitation is 3 years from the date of attaining majority. When once we arrive at a conclusion that Article 60 of the Act applies and the limitation is 3 years, the crucial question is when there are several plaintiffs, what is the reckoning date of limitation? A reading of Section 7 makes it clear that when one of several persons who are jointly entitled to institute a Suit or make an application for the execution of the decree and a discharge can be given without the concurrence of such person, time will run against all of them but when no such discharge can be given, time will not run against all of them until one of them becomes capable of giving discharge.

32. In the case on hand, the 1st plaintiff was 20 years old, the 2nd defendant was still a minor and the plaintiffs 3, 4 and 5, who are married daughters, were aged 29, 27 and 25 respectively, on the date of institution of the Suit in the year 1989. As per Explanation 2 of Section 7, the manager of a Hindu undivided family governed by Mithakshara law shall be deemed to be capable of giving a discharge without concurrence of other members of family only if he is in management of the joint family property. In this case, plaintiffs 3 to 5 though majors as on the date of institution of Suit will not fall under Explanation 2 of Section 7 of the Limitation Act as they are not the manager or Karta of the joint family. The first plaintiff was 20 years old as on the date of institution of the Suit and there is no evidence forthcoming to arrive at a different conclusion with regard to the age of the 1st plaintiff. In that view of the matter, the Suit is instituted well within three years of limitation from the date of attaining majority as envisaged under Article 60 of the Act.

33. Hence, in view of the above discussion, as the appeal is devoid of merits, we deem it appropriate to dismiss the appeal and accordingly the appeal is dismissed but in the circumstances without costs.

.....J. (MADAN B. LOKUR)J. (N.V. RAMANA) New Delhi, April
5, 2016
