Kishenlal vs Satya Prakash And Ors. on 14 August, 1951

Equivalent citations: AIR1952ALL105, AIR 1952 ALLAHABAD 105

JUDGMENT

P.L. Bhargava, J.

1. This is a plaintiff's appeal. It arises out of a suit for partition of a half share in four items of property--a residential house and shares in three villages. The plaintiff's case was that the property in suit belonged to the joint family consisting of the descendants of Girdhari Lal. The following geneological table gives the descendants of Girdhari Lal, who were alive on the date of the suit, and also indicates the relationship between the parties to this litigation :

G I R I D H A R I L A L
_____|_____ | | | | Ram Parsad Pokhpal Salig Ram Raghunath (dead) (died 1921) (died issue- (died issue-

| | less)=Smt. les
Panna Lal Mohan Lal Laraiti(dead) Reoti(dead
(died 1945) (died 1918)
=Smt.Kasturi =1. Mt. Bhagwan & 2. Mt. Lachmi
Devi(deft.4) Devi Kuer
| |
| Kishan Lal
| (plaintiff)
|_____
| | |
Satya Parkash Prem Prakash Gokal prakash
(deft.1) (deft.2) (deft.3)

The plaintiff's case was that as the son of Mohare Lal he was entitled to a half share in the properties in dispute and he claimed partition of that share.

2. The defence was that the plaintiff was not the legitimate son of Mohan Lal ; that two of the village properties in dispute were the self-acquired properties of Panna Lal ; that the families of Panna Lal and Mohan Lal had separated and there was no longer any joint family; and that the suit was barred by limitation.

3. The Courts below have held that the plaintiff is the legitimate son of Mohan Lal ; that none of the properties in dispute is the self-acquired property of Panna Lal ; and that there was no separation between the branches of Panna Lal and Mohan Lal and their families were still joint. On the question of limitation the Courts-below have differed. The trial Court held that the suit was within time ; but the lower appellate Court has held that the suit was barred by time as the defendant had acquired title to the properties in dispute by adverse possession for over 12 years.

4. The sole point for consideration in this appeal is whether the suit was barred by limitation. In this appeal on behalf of the plaintiff appellant it has been contended that the suit was governed by Article 127, Limitation Act, and not by Article 144, Limitation Act, as the lower appellate Court seems to have held and that, even if the suit was governed by Art, 144, Limitation Act the ouster of the plaintiff had not been established and as such the suit was not barred by limitation.

5. Learned counsel for the defendants respondents at first unreservedly conceded that the suit was governed by Article 127, Limitation Act; but subsequently, having come across a full bench decision of this Court in Amme Raham v. Zia Ahmed, 13 all. 282, he attempted to argue that Article 127 of the Limitation Act was inapplicable to a suit for partition. He also contended that the Court below had not recorded any clear finding about the existence of any joint family, and for that reason also Articles 127 was inapplicable to the present case. The question whether the family was joint or separate was dealt at some length by the trial Court under issue 8. The trial Court initiated the discussion on the issue by saying that the case for the plaintiff was that the family of Girdhari Lal and his descendants had all along been joint and that Mohan Lal, Pokhpal and Panna Lal died as members of the joint Hindu family; and that the case for the defendants, on the other hand, was that all the sons of Girdhari Lal were separate. The trial Court accepted the plaintiffs case and rejected that of the defendants in other words, the Court found that the family was joint. The lower appellate Court also considered this matter and held that the finding recorded by the trial Court on this point was correct. Thus, there can be no doubt whatsoever that the Courts below have recorded a categorical finding that there was a joint family.

6. The case of Amme Raham (13 ALL. 282) is, however, clearly distinguishable as that was a case by Muhammadans for possession by right of inheritance of shares in the property of their deceased ancestor. The head-note of that case runs as follows :

> "The words 'joint family property' in no. 127 of Schedule II, Limitation Act (XV [15] of 1877) mean 'the property of a joint family.' Hence the period of limitation prescribed by No. 127 of Schedule II, Limitation Act will not apply to a case in which members of a Muhammadan family are suing foe possession by right of inheritance of shares in immoveable property alleged to have been that of the deceased common anoesstor of themselves and some of the defendants, and of which they allege they had been dispossessed by the defendants."

7. Learned counsel for the defendants, however, in the end reiterated the concession made by him and stated that the proper article applicable to the present suit was Article 127, Limitation Act. Obviously, the plaintiff, who was excluded from the joint family property sought partition of his half

share in the joint family property by enforcement of his share therein; and the suit was, in my opinion, governed by Article 127, Limitation Act.

8. Now, I proceed to determine whether, in view of the provisions of Article 127, Limitation Act, the suit was within time. It may be noted here that the plaintiff was born on 10-7-1917, and he attained majority on 10-7-1935. The present suit wan instituted on 14-11-1945

9. Article 127, Limitation Act, is in these terms:

Description of suit.	Period of limitation.	Time from which period begins to run.
127. By a person excluded from joint family property to enforce a right to share therein.	Twelve years.	When Sha exclusion becomes known to the plaintiff.

Two questions, therefore, arise for determination (1) whether the plaintiff was at any time excluded from joint family property and, if so, when? and (2) whether exclusion became known to the plaintiff and, if so, when?

10. The defendants have attempted to show that the plaintiff was for the first time excluded from the joint family property in the year 1919. Let us see what happened in that year. Bhagwan Devi, the mother of the plaintiff, had voluntarily left her husband's house and gone to her parents' house in Mathura. The plaintiff was born all Mathura. Pokhgal, plaintiff's grandfather, went to Mathura to bring back Bhagwan Devi, but she refused to return. This naturally annoyed Pokhpal. Mohan Lal married again; and the name of his second wife was Lachhmi Kuar. Mohan Lal, however, died soon afterwards while the plaintiff was only a year old. Mohan Lal had inherited some property in village Magrauli in the district of Etah from his maternal grandfather, In the mutation proceedings, which took place on the death of Mohan Lal, in regard to the Magrauti property, Pokhpal stated that Mohan Lal had no son; that Mohan Lal had two wives, his first wife, whose name was not known, had gone somewhere, and his second wife was Lachhmi Kuar, who lived with him; that Mohan Lal was joint with him; and that he did not desire that the mutation of names be made in favour of the widows of Mohan Lal. He prayed that the mutation might be made in his name. The mutation, however, appears to have been made in the name of Lachhmi Kuar, the widow of Mohan Lal. Pokhpal's statement referred to the property in Magrauli, and it had nothing to do with the joint family property, which is now in dispute.

11. On behalf of the plaintiff-appellant it has been argued that, even if what happened in the mutation proceedings of the year 1919 amounts to the exclusion of the plaintiff, that has got nothing to do with the question of exclusion of the plaintiff from the joint family property, which is now in dispute; and in law it does not amount to plaintiff's exclusion from the joint family property. On the other hand, learned counsel for the defendants respondents has contended that the attempt made by Pobhpal to exclude the plaintiff from the joint family amounts to the exclusion of the plaintiff from the entire property to which he was entitled as the son of Mohan Lal. The statement made by Pokhpal has been set out above and, having regard to the circumstances in which it was made, it must be confined to the property in relation to which it was made. What the defendants have to establish in this case is that the plaintiff was excluded within his knowledge from the joint family property which is now in dispute. Pokhpal at the time when he made the statement was in possession of the joint family property and by the statement which he made he intended to obtain mutation in respect of the Magrauli property only. It is not possible, therefore, to infer from the statement which he made that he intended to exclude the plaintiff from every item of property, including the joint family property, which was not then in dispute.

12. At the time when the statement of Pokhpal was made the plaintiff was only a year or two old. Pokhpal deliberately attempted to conceal the whereabouts of the plaintiff's mother by saying that he did not know her name. When it was stated by him that he did not know the name of the plaintiff's mother, no notice of the proceedings could have been given to her. Obviously, therefore, neither the plaintiff nor his natural guardian, the mother, had notice of the mutation proceedings in the year 1919.

13. Consequently, in the first place, what happened in the year 1919 can have no bearing on the question of the exclusion of the plaintiff from the joint family property, now in dispute, and, in the nest place, there is nothing on the record to show that the plaintiff or his guardian had any knowledge of what happened then or of the alleged exclusion.

14. Next, it has been alleged that in the year 1930 Eon Lal, the father-in-law of the plaintiff, as the general agent of the plaintiff's mother, had made an application for the entry of the plaintiff's name in the khewat of village Magrauli. It does not appear from the record as to what was the nature of the contest put in on behalf of Lachhmi Kuar, the step-mother of the plaintiff, but her name, no doubt, continued in spite of the application. For the reasons given in connection with the alleged exclusion in the year 1919. these proceedings which also related to the Magrauli property can have no bearing on the question whether the plaintiff was at any time excluded from the joint family property now in dispute.

15. Then, it is alleged that in the year 1981-22 on the death of Pokhpal, Panna Lal had obtained mutation in his favour in respect of the property belonging to the joint family to the exclusion of the plaintiff. The application made by Panna Lal for mutation of his name in place of Pokhpal deceased is not on the record; consequently, it is not possible to say whether Panna Lal had claimed mutation as head of the family as he then was or by excluding the plaintiff on the ground that he was not the son of Mohan Lal. Moreover, there is nothing on the record to show that the plaintiff or his guardian had any notice of these mutation proceedings: It is not disputed that mere mutation of names is not

sufficient to prove ouster or exclusion.

16. In the year 1922, it is alleged; Panna Lal had executed a decree which stood in the name of Pokhpal as the surviving member of the family. The application for execution is not on the record, and we do not know whether Panna Lal was acting as the head of the family or he had alleged anything so as to exclude the plaintiff from the family or deny his rights. In any case, it has neither been alleged nor proved that the plaintiff or his guardian had any notice of that application. These events of the years 1921 and 1922, therefore, do not show the exclusion of the plaintiff from the joint family property.

17. Reliance has next been placed upon the statement of one Babu Lal, who has stated that in the year 1924-25 the plaintiff's mother had gone to him and, in the presence of Panna Lal, claimed maintenance or a share in the joint family property which Panna Lal had refused to give. This is how the lower appellate Court has viewed the statement of Babu Lal. Bhagwan Devi had gone to Soron, a fact which has been admitted by her. On her way back she had put up with him for a few days, another fact which has been admitted by her. Bhagwan Devi asked Babu Lal for maintenance or for a share in the property from Panna Lal and she had asked Babu Lal to intervene and persuade Panna Lal to give her something by way of support. The learned Judge in the Court below was not prepared to accept the statement of Babu Lal straightway and has observed :

> "If we believe Babu Lal, then it will be seen that is 1925 too Mt Bhagwan Devi had tried to make a claim but it was refused."
>
> Babu Lal is Panna Lal's sister's husband He has adopted one of the sons of Panna Lal, that is the son of defendant 4 and the brother of defendants l to 3. He was the pairokar of the defendants. Consequently, he was in every way interested in the defendants. He denied the legitimacy of the plaintiff; and as such not favour, ably inclined towards him. Consequently, even if Bhagwan Devi had at any time gone to Baba Lal's house, it is difficult to believe that of all persons she would have asked Babu Lal to help her in getting something for her support from Panna Lal. Moreover, if Baba Lal was denying the legitimacy of the plaintiff, it is difficult to believe that he would have intervened in this matter at all on the side of Bhagwan Devi or her child. Although the learned Judge in the Court below had some doubts, I have no doubt about Babu Lal's partiality towards the defendants and the interested nature of his statement, upon which, in the circumstances of the case, no reliance can be placed.

18. Lastly, reference was made to what happened in or about the year 1930 on the deaths of Laraisi and Reoti, the widows of Saligram and Baghunath respectively. On their deaths, the name of Panna Lal was mutated against the property which was left by Laraiti and Eeoti. The applications for mutation of names being not before us, we do not know if Panna Lal had sought to exclude the plaintiff. Moreover, there is nothing on the record to show that the plaintiff or his guardian had any notice of the mutation proceedings on the deaths of these two ladies.

19. Learned counsel for the appellant has argued that even if any attempt was ever made between the years 1919 and 1930 to exclude the plaintiff, he could possibly have no knowledge about it as he was a minor during that period. He has invited my attention to a decision of this Court in Niranjan Prasad v. Behari Lal, 1929 ALL. L.J. 824; but that case cannot be considered as an authority for the proposition that a minor can acquire no knowledge during his minority, as no such proposition was laid down therein. I find it difficult to hold that merely because the plaintiff was a minor he could have no knowledge of his exclusion. A person, who is a minor, during his minority suffers from a disability. He is presumed to be incapable of acting like an adult person. The disability or incapacity cannot affect the use of his mental or physical faculties. He can perceive, see and know what is happening around him. After the age of discretion he can even visualise and remember things he sees, perceives or learns. If he suffers any loss or if he is deprived of anything he knows about it all right and often complains about the loss. Similarly, if he is excluded from any property, he must know about it. The law merely recognises his incapacity to take action, and allows him concession in the matter of time ordinarily allowed for taking action in similar cases.

20. In Kalyandappa v. Chanbasappa, 22 ALL. L. J. 508 at p. 513 their Lordships of the Privy Council observed :

> "This line of reasoning seems to assume that you cannot impute knowledge to a minor--a view which is certainly not in accordance with the facts of human nature."

The Madras High Court has in Gajapati Narasimha v. Gajapati Krishnachandra Deo, A. I. R. (7) 1920 Mad. 193 held that the knowledge of the guardian must be imputed to the minor within the meaning of Article 127, Limitation Act.

21. In this case, the defendants respondents have failed to prove that the plaintiff or his guardian knew about the alleged exclusion between 1919 and 1930 except Dori Lal's application in or about 1930 but that event is of no consequence for the reasons already stated.

22. Learned counsel for the respondents has contended that the Court below has found as a fact that there was ouster of the plaintiff as far back as the year 1919 and ouster and exclusion are synonymous terms; and that the finding of fact is now conclusive and binding in second appeal. The lower appellate Court has merely found that certain events took place from time to time in and after 1919. The question still remains whether those events in law amount to exclusion or ouster for purposes of Article 127, Limitation Act. That legal proposition can be considered in this appeal. Moreover, the Court below had proceeded to determine the question of adverse possession, which was hardly material if the suit was governed by Article 127, Limitation Act.

23. Admittedly, in the year 1941, during the settlement proceedings the plaintiff, Kishan Lal, tried to get his name entered as against the joint family property; but he was unsuccessful. Again in the year 1945 on the death of Panna Lal the plaintiff failed to get mutation of his name entered in respect of the joint family property. First in the year 1941 and again in the year 1945 clearly there was the exclusion of the plaintiff from the joint family property within his knowledge.

24. In the circumstances pointed out above, it must be held that the plaintiff was excluded from the joint family property for the first time in the year 1941 within his knowledge and that must be taken as the starting point of limitation under Article 127, Limitation Act. From that date the present suit was instituted well within 12 years and as such it must be held to be within time.

25. The appeal is, accordingly, allowed, the decision of the Court below is set aside and the plaintiff's suit id decreed with costs in all the Courts. The plaintiff is declared to be the owner of a half share of the properties in dispute. He will obtain a partition of the properties in dispute according to law.

26. Leave to file further appeal is disallowed.