Gurbinder Singh And Another vs Lal Singh And Another on 12 February, 1965

Equivalent citations: 1965 AIR 1553, 1965 SCR (3) 63, AIR 1965 SUPREME COURT 1553, 1966 2 ANDHLT 134, 1966 SCD 103, 1965 (1) SCWR 670, 1965 SCD 103, 1965 3 SCR 63

Author: J.R. Mudholkar

Bench: J.R. Mudholkar, Raghubar Dayal, R.S. Bachawat, V. Ramaswami

PETITIONER:
GURBINDER SINGH AND ANOTHER

Vs.

RESPONDENT:
LAL SINGH AND ANOTHER

DATE OF JUDGMENT:
12/02/1965

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SUBBARAO, K.
DAYAL, RAGHUBAR
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1965 AIR 1553 1965 SCR (3) 63

ACT:
Indian Limitation Act (9 of 1908), s. 2(4) and Arts. 142 and 144--Scope of.

HEADNOTE:
One Mst. Raj Kaur was holding certain lands on different tenures under the Raja of Faridkot. She had two daughters. She adopted the son of one of them and put him in possession of all the lands. He transferred a part of the lands to the second respondent who was son of the other daughter of Raj Kaur. After Raj Kaur's dearth the Raja filed suits for possession of the land, and in execution of the

decree he obtained in those suits, took possession of the entire land, in October, 1938. He then transferred the land, but the transferee was dispossessed by the appellants in June 1950, in execution of a decree they obtained, in a suit for preemption filed by them against the transferee. The second respondent's mother had died in 1938 and her sons the first and second respondents, filed a suit for possession of the entire land in February 1950, as heirs of Raj Kaur, but it was decreed only to the extent of their half share, and the decree was affirmed by the High Court.

In the appeal to this Court it was contended that the suit was governed either by Art. 142 or Art. 144 of the Indian Limitation Act, 1908, and on either basis, was barred by time.

HELD: (i) Article 142 would not be attracted to the suit.

In order that the article may be attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or some one through whom the defendant claims or alternatively, the plaintiff should have discontinued possession. It was no one's case that the first respondent was ever in possession of the property. As regards the second respondent's possession at one time of a part of the property, it was by reason of a transfer by the adopted son. The claim in the instant case, however, was by succession, under a different title altogether, and so it must be held that the plaintiffs-respondents, as heirs of Raj Kaur, were never in possession of the land. [65H]

(ii) Article 144 was applicable to the suit, but the suit was not barred by time.

Adverse possession against the respondents started in October. 1938, when the Raja took possession of the land. To that adverse possession could be added that of his transferee and that of the appellants who had preempted the lands under the decree obtained by them against the transferee. But, the sum total of the adverse possession of all those persons at the date of the respondent's suit would be less than 12 years. The adverse possession of the adopted son could not be tacked on to the adverse possession of the Raja and those who claim through him, because, in a suit to which Art 144 is attracted, the burden is on the defendant to establish that he was in adverse possession for 12 years before the date of suit, and for computation of that period, he can avail himself of the adverse possession of any person or persons through whom he claims but not the adverse possession of independent tres-

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passers. The starting point of limitation in Art. 144 is the date when the possession of the defendant becomes adverse to the plaintiff. The gist of the definition of the word "defendant" in s. 2(4) of the Act is the existence of a jural relationship between the different persons referred to in the definition, and there can be no jural relationship

between two independent trespassers. [66 F-H; 68C; 70B].
Ramayya v. Kotamma, (1921) I.L.R. 45 Mad. 370, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 431 of 1963. Appeal from the judgment and decree dated May 21, 1958 of the Punjab High Court in Civil Regular Second Appeal No. 263-P of 1952.

Tarachand Brijmohanlal, for the appellants. B.R.L. lyengar, S.K. Mehta and K.L. Mehta, for the respondents.

The Judgment of the Court was delivered by Mudholkar, J. The only question for consideration in this appeal by certificate from the High Court of Punjab is whether the suit for possession instituted by the respondents Lal Singh and Pratap Singh is within time. According to the appellants the suit is governed not by art. 141 of the Limitation Act, 1908 (9 of 1908) as held by the High Court but either by art. 142 or by art. 144 and is on that basis barred by time. While it is conceded on behalf of the respondents that the suit is not governed by art. 141 it is contended that it is governed by art. 144 and not by art. 142 and is within time. In order to appreciate the contentions it is necessary to set out the relevant facts which are no longer in dispute.

Mst. Raj Kaur was in possession of 851 kanals 18 marlas of land situate in village Dhaipai in the former State of Faridkot. Out of this land 481 kanals 7 marlas was in her possession as occupancy tenant, the landlord being the Raja of Faridkot while the remaining land was held by Smt. Raj Kaur as Adna Malik, the Aala malik again being the said Raja of Faridkot. In Samvat 1953 (A.D.1896) Smt. Raj Kaur who had two daughters Prem Kaur and Mahan Kaur, adopted the former's son Bakshi Singh and put him in possession of the whole of the land. Bakshi Singh transferred part of the land to Pratap Singh, second son of Mahan Kaur, who is respondent No. 2 in the appeal. Mahan Kaur had one more son Lal Singh and he is respondent No. 1 in this appeal.

In the year 1915 the Raja of Faridkot filed a suit against Bakshi Singh and Raj Kaur in the court of Sub-Judge, Faridkot for a declaration that the adoption of Bakshi Singh was invalid. This suit was decreed on February 9, 1916. Raj Kaur died on August 14, 1930. On February 19, 1934 the Raja filed two suits against Bakshi Singh and Pratap Singh for possession of the aforementioned lands, one pertaining to the land of which Raj Kaur was occupancy tenant and the other for that of the land of which she was Adna malik. These suits were decreed on March 12, 1938 and in execution of the decrees obtained in these suits the Raja took possession of the entire land in October 1938. On April 7, 1948 he sold the entire land along with some other land to one Kehar Singh for Rs. 84,357-5-0. Thereupon Gurbinder Singh and Balbinder Singh. who are the appellants before us, filed a suit for pre-emption of the land against Kehar Singh and obtained a decree in their favour. In execution of that decree they got possession of the land on June 22, 1950.

On October 20, 1948 Mst. Prem Kaur instituted a suit for possession of the entire land on the ground that she was the legal heir of Raj Kaur against Kehar Singh and the Raja of Faridkot. Later she impleaded the appellants as defendants to that suit and discharged the Raja of Faridkot. On February 17, 1950, Lal Singh, respondent No. 1, filed a suit for possession of the entire land against the Raja of Faridkot and Kehar Singh. To that suit he joined Prem Kaur and Pratap Singh as defendants. Later, however, Pratap Singh was transposed as a plaintiff. Both the suits were consolidated and were tried together. The suit of Prem Kaur was dismissed by the trial court but that of the respondents was decreed to the extent of half share in the property. Prem Kaur and the appellants preferred appeals before the District Court but that court dismissed both the appeals. A second appeal was taken by the appellants as well as by Prem Kaur to the High Court and cross-objections were preferred by the respondents. The High Court dismissed these appeals as well as the cross-objections.

In the absence of any appeal by Prem Kaur against the decision of the High Court confirming the dismissal of her suit we have only to consider the claim of the respondents to half the property left by Raj Kaur. Their claim was resisted by the appellants on several grounds in the courts below. Before us, however, only one ground is pressed and that is, the suit is barred by limitation. As already stated, according to the appellants, the suit is governed either by art. 142 or by art. 144 of the Limitation Act and not by art. 141. Mr. lyengar for the respondents. does not rely upon art. 141 at all. He also contends that art. 142 has no application and that the suit is governed by art. 144 only. Mr. Tarachand Brijmohanlal for the appellants also relied on art. 144 in the alternative.

In order that art. 142 is attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or someone through whom the defendants claim or alternatively the plaintiff should have discontinued possession. It is no one's case that Lal Singh ever was in possession of the property. It is true that Pratap Singh was in possession of part of the property--which particular part we do not know--by reason of a transfer thereof in his favour by Bakshi Singh. In the present suit both Lal Singh and Pratap Singh assert their claim to property by success on in accordance with the rules contained in the dastur ul amal whereas the possession of Pratap Singh for some time was under a different title altogether. So far as the present suit is concerned it must, therefore, be said that the plaintiffs--respondents were never in possession as heirs of Raj Kaur and consequently art. 142 would not be attracted to their suit.

It is in these circumstances that we have to consider whether under art. 144 the suit is barred by time. The starting point of limitation set out in col. 3 of art. 144 is as follows:

> "When the possession of the defendant becomes adverse to the plaintiff".

To recapitulate the events. Raj Kaur died on August 14, 1930 whereupon under dastur-ul-amal her daughters Prem Kaur and Mahan Kaur became entitled to the possession of the land. According to the appellants the daughters succeeding their mother took an absolute estate. Assuming that is so, what would be the position? As already stated, Bakshi Singh and Pratap Singh were in possession of the entire land belonging to Raj Kaur. Ignoring for the time being their relationship with Raj Kaur, what can be said is that they were adversely in possession to the true owners, that is, Prem Kaur and

Mahan Kaur, daughters of Raj Kaur as from August 14, 1930. Before, however, they could perfect their title against Prem Kaur and Mahan Kaur the Raja instituted a suit for possession, obtained a decree thereunder and actually entered into possession to the entire land in October, 1938. Though the Raja obtained possession under a decree of the court he was in the eye of law nothing but a trespasser in so far as the heirs of Raj Kaur, her daughters Prem Kaur and Mahan Kaur were concerned. Mahan Kaur had in fact died on July 13, 1938, i.e. before the Raja obtained possession. Therefore, it is more accurate to say that the possession of the Raja became adverse to Prem Kaur and to the respondents Lal Singh and Pratap Singh as from October, 1938. Kehar Singh who was a transferee from the Raja stood in the Raja's position and got the benefit of the Raja's adverse possession. Similarly the appellants who had preempted these lands under the decree obtained against Kehar Singh got advantage not only of the Raja's adverse possession but also of Kehar Singh's. The sum total of the adverse possession of these three persons at the date of the respondent's suit would, however, be less than 12 years and so the respondents' suit could not be said to be barred by art. 144 if the starting point of limitation is taken to be some day in October, 1938.

Mr. Tarachand Brijmohanlal, however, advanced an interesting argument to the effect that if persons entitled to immediate possession of land are somehow kept out of possession may be by different trespassers for a period of 12 years or over, their suit will be barred by time. He points out that as from the death of Raj Kaur her daughters, through one of whom the respondents claim. were kept out of possession by trespassers and that from the date of Raj Kaur's death right up to the date of the respondents suit, that is, for a period of nearly 20 years trespassers were in possession of Mahan Kaur's, and after her death, the respondents share in the land, their suit must therefore be regarded' as barred by time. In other words the learned counsel wants to tack on the adverse possession of Bakshi Singh and Pratap Singh to the adverse possession of the Raja and those who claim through him. In support of the contention reliance is placed by learned counsel on the decision in Ramayya v. Kotamma(1). In order to appreciate what was decided in that case a brief resume of the facts of that case is necessary. Mallabattudu, the last male holder of the properties to which the suit related, died in the 'year 1889 leaving two daughters Ramamma and Govindamma. The former died in 1914. The latter surrendered her estate to her two sons. The plaintiff who was a transferee from the sons of Govindamma instituted a suit for recovery of possession of Mallabattudu's property against Punnayya, the son of Ramamma to whom Mallabattudu had made an oral gift of his properties two years before his death. Punnayya was minor at the date of gift and his eider brother Subbarayudu was managing the property on his behalf. Punnayya, however, died in 1894 while still a minor and thereafter his brothers Subbarayudu and two others were in possession of the property. It would seem that the other brothers died and Subbarayudu was the last surviving member of Punnayya's family. Upon Subbarayudu's death the properties were sold by his daughters to the third defendant. The plaintiffs- appellants suit failed on the ground of limitation. It was argued on his behalf in the second appeal before the High Court that as the gift to Punnayya was oral it was invalid, that consequently Punnayya was in possession as trespasser, that on Punnayya's death his heir would be his mother, that as Subbarayudu continued in possession Subbarayudu's possession was also that of a trespasser, that as neither Subbarayudu nor Punnayya completed possession for 12 years they could not tack on one to the other and that the plaintiff claiming through the nearest reversioner is not barred. The contention for the respondents was that there was

no break in possession so as to retest the properties in the original owners, that Punnayya and Subbarayudu cannot be treated as successive trespassers and that in any event the real owner having been out of possession for over 12 years the suit was barred by limitation. The High Court following the decision of Mookerjee J. in Mohendra Nath v. Shamsunnessa(3)held that time begins to run against the last full owner if he himself was dispossessed and the operation of the law of limitation would not :be arrested by the fact that on his death he was succeeded by his widow, daughter or mother, as the cause of action cannot be prolonged by the mere transfer of title. It may be mentioned that as Mallabattudu had given up possession to Punnayya under an invalid gift art. 142 of the Limitation Act was clearly attracted. The (1) (1921) I.L.R. 45 Mad. 370.

(2) (1941) 21 C.L.J. 757, 164.

sons of Govindamma from whom the appellant had purchased the suit properties claimed through Mallabattudu and since time began to run against him from 1887 when he discontinued possession it did not cease to run by the mere fact of his death. In a suit to which that article applies the plaintiff has to prove his possession within 12 years of his suit. Therefore, so long as the total period of the plaintiff's exclusion from possession is, at the date of the plaintiff's suit, for a period of 12 years or over, the fact that this exclusion was by different trespassers will not help the plaintiff provided there was a continuity in the period of exclusion. That decision is not applicable to the facts of the case before us. This is a suit to which art. 144 is attracted and the burden is on the defendant to establish that he was in adverse possession for 12 years before the date of suit and for computation of this period he can avail of the adverse possession of any person or persons through whom he claims --but not the adverse possession of independent trespassers.

In so far as the adverse possession of Bakshi Singh and Pratap Singh is concerned it began upon the death of Raj Kaur and not during her life time. That being so, art. 142 cannot possibly be attracted whereas the Madras decision turns upon a case to which art. 142 applied. No doubt, there, on behalf of the plaintiff appellant it was argued on the authority of Agency Co. v. Short(') that in cases of successive trespassers limitation ceases to run against the lawful owner of the land after an intruder has relinquished his possession; that on the death of Punnayya it must be taken that there was an interruption in the possession and that there was an interval between Punnayya's death and Subbarayudu's taking possession in his own right however minute the interval may be and that except in the case of succession or revolution all other cases would fall within the principle enunciated in Agency Co's case(1). The learned Judges did not accept the contention but relying upon the decision in Willis v. Earl Howe(2) and a passage 'in Dart on Vendors and Purchasers, Vol. 17th ed. p. 474 held that the suit was barred by time. It may be pointed out that on Punnayya's death his mother would be the heir and that it was established in that case that she was living with his brother Subbarayudu and his other brothers. Subbarayudu would therefore, be a presumptive reversioner on the death of his mother and there was evidence to show that she was a consenting party to Subbaryudu's enjoying the properties after Punnayya's death. It is under these circumstances that the High Court found it difficult to hold that there was a fresh trespass by Subbarayudu after the death of Punnayya. On the other hand, according to them, there was a continuity of possession because the person who continued to hold possession was the presumptive heir of the deceased. From the facts of the case it will be clear that what was tacked on was not the

possession of independent trespassers at all. In the case before us what (1)[1888] 13 A.C. 793.

(2) [1893] 2 Ch. 545.

is being sought to be tacked on to the possession of the Raja and those who claim through him is the possession of Bakshi Singh and Pratap Singh. The Raja in his suit against Bakshi Singh challenged the right of Bakshi Singh and Pratap Singh to possession on the ground that they were trespassers. As it has turned out, the possession of the Raja, though obtained under the decree of a civil court, was in itself a trespass on the rights of the persons who were in law entitled to possession of property. Thus this is a case of one trespasser trespassing against another trespasser. There is no connection between the two and, therefore, in law their possession cannot be tacked on to one another. As pointed out by Varadachariar J., in Rajagopala Naidu v. Ramasubramania Ayyar(1).

> "Further the doctrine of independent trespassers will come in only when the second man trespasses upon the possession of the first or the first man abandons possession."

Where it applies the principle laid down in Agency Co's(1) case-would apply and preclude the tacking of possession of successive trespassers. The following observations of Lord Macnaghten in that case are pertinent and run thus:

> "They are of opinion that if a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. There is no one against whom he can bring an action. He cannot make any entry upon himself. There is no positive enactment, nor is there any principle of law. which requires him to do any act. to issue any notice or to perform ,my 'ceremony in order to rehabilitate himself. No new departure is necessary. The possession of the intruder, ineffectual for the purpose or transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner, or any secret process at work for the possible benefit in time to come of some casual interloper or lucky vagrant. There is not, in their Lord ships' opinion, any analogy between the case supposed and the case of successive disabilities mentioned in the statute. There the statute 'continues to run' because there is a person in possession in whose favour it is running."

This view has not been departed from in any case. At any rate none was brought to our notice where it has not been followed. Apart from that what we are concerned with is the language used by the legislature in the third column of art.

144. The starting point of limitation there stated is the date when the possession of (1) A.LR. [1935] Mad. 449.

the defendant becomes adverse to the plaintiff. The word "defendant" is defined in s. 2(4) of the Limitation Act thus:

> "'defendant' includes any person from or through whom a defendant derives his liability to be used".

No doubt, this is an inclusive definition but the gist of it is the existence of a jural relationship between different persons. There can be no jural relationship between two independent trespassers. Therefore, where a defendant in possession of property is sued by a person who has title to it but is out of possession what he has to show in defence is that he or anyone through whom he claims has been in possession for more than the statutory period. An independent trespasser not being such a person the defendant is not entitled to tack on the previous possession of that person to his own possession. In our opinion, therefore, the respondents' suit is within time and has been rightly decreed by the courts below. We dismiss this appeal with costs.

Appeal dismissed.