

Munshi Manzoor Ali Khan vs Sukhbasi Lal on 14 March, 1969

Equivalent citations: AIR1974SC706, 1969(2)UJ343(SC), AIR 1974 SUPREME COURT 706, 1974 2 SCR 741, 1969 2 SCWR 234, 1969 CURLJ 375, 1969 SCD 774, 1973 JABLJ 1039, 1971 MAH LJ 571, 1971 MPLJ 529, 1970 JABLJ 42

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Bench: S.M. Sikri

JUDGMENT

S.M. Sikri, J.

1. This appeal by special leave is directed against the judgment of the High Court of Madhya Pradesh dated September 25, 1964, allowing the appeal filed by the respondents before us and dismissing the suit filed by the appellants before us, hereinafter referred to as the plain-tiffs. The High Court held that the suit was barred by limitation and this is the only question which arises in the appeal before us.

2. The relevant facts for the determination of the question of limitation are as follows: The plaintiffs, representing Anjuman-i-Islam and the Muslims of Bhind, filed a suit against the defendants, respondents before us and hereinafter referred to as the defendants, in the Court of Civil Judge, Bhind, claiming the declaration of title and possession of the land in suit. In the plaint it was alleged that the Masjid Idgah owned by and in the possession of the Muslims had existed for a long time and part of the Masjid shown in the plaint adjoined the shops of the defendants. On April 30, 1957, the northern portion of the danda was being repaired at the instance of the plaintiffs but the defendants prevented the repairs and made a report under Section 145 of the Criminal Procedure Code in the Court of S.D.M., Bhind. In these proceedings as a result of the final order of the S.D.M., Bhind, on March 4, 1959, the defendants were put in possession of the property. Revision was filed in the Court of District and Sessions Judge but it was held by that Court that the land in dispute was in the possession of the defendants and that they had the right of way through it.

3. It was further alleged in the plaint that the defendants had been illegally possessing the suit land and using the same since January 30, 1957, for which damages were claimed. The cause of action was alleged to have arisen on March 4, 1959, the date Of the last judgment of S.D.M., Bhind.

4. The defendants denied that the suit land and the danda were parts of the Masjid Idgah. On the other hand they asserted that these were owned by and were in the possession of the defendants. It was further stated that the defendants have been denying continuously the ownership and

possession of Idgah over this property not only since April 20, 1957, but since several years before that, which period exceeds 12 years. The danda was not demolished on 11-12-57, and converted Into a path. On the other hand, at that spot existed the entrance leading to the Bara of the defendants since the year 1962 (S.Y.).

5. Various issues were raised, one of them being whether the plaintiffs' suit was not within limitation. The trial court held that the cause of action arose after the judgment in the proceedings under Section 145, Cr. P. C., i.e., March 4, 1959, and the suit was within limitation.

6. Before the District Judge, on appeal, the defendants submitted that an issue should have been framed about adverse possession. The District Judge repelled that contention. No other point regarding limitation seems to have been argued before the District Judge.

7. In the appeal of the defendants to the High Court it was contended that the suit was barred under Article 142 of the Limitation Act, 1908, and that Article 47 had no application to the case. The High Court held that Article 47 did not apply because the plaintiffs in the present suit Cannot be held to be persons bound by an order respecting the possession of the property to dispute by the order passed on 4-3-1959 as that order was passed against Amir Khan, Iqbal-beg and Nabibux in their individual capacity.

The High Court then held that Article 142, of Limitation Act applied because the suit was for possession of the land after the plaintiffs alleged dispossession and that it was therefore, necessary that the suit should have been instituted within 12 years of the date of dispossession.

8. The High Court held that the starting point of limitation could not be from April 30, 1957, and it was necessary for the plaintiffs to show that they had been in possession within 12 years of the suit.

9. The High Court examined the evidence, and since the evidence has not been printed before us we are content to take the effect of the evidence from the High Court The High Court held that there was no evidence to show that the plaintiffs had been in possession of the suit land within 12 years of the suit The High Court further pointed out that none of the plaintiffs went into the witness box to prove possession of the Kigali over this land.

10. The learned Counsel for the appellants was unable to point out any material to show that there was any evidence on the record establishing that the plaintiffs were in possession of the suit land within 12 years of the date of the suit. In our opinion the High Court was right in holding that the suit was barred under Article 142 of the Limitation Act.

11. The learned Counsel contended that the suit was within limitation because it was brought within 3 years of the order of the Magistrate, dated March 4, 1969, the period provided in Article 47. But a suit may be within limitation under one article and may yet be barred under another article of the Limitation Act in two cases decided by the Privy Council the suits failed under Article 144 although these were instituted within 3 years of the orders of the Magistrates under Section 145, Criminal P. C. See Jahandad Khan v. Abdul Ghafur Khan and Radhamoni Debi v. The Collector of Khulna

(1900) ILR 27 Cal 943 (PC).

12. In the result the appeal falls and is dismissed but there will be no order as to costs.