

**A** YESHWANTRAO LAXMANRAO GHATGE & ANR.

v.

**D** BABURAO BALA YADAV AND ORS.

February 9, 1978

**B** [N. L. UNTWALIA AND P. S. KAILASAM, JJ.]

*Limitation Act (Act IX), 1908—Section 28, and Articles 134, 134A, 134B, 142 and 144—Effect of Section 28.*

**C** *Bombay Public Trusts Act, 1950, S. 52A (as introduced by Bombay Act 23 of 1955) whether S. 52A, under which there is no limitation for recovery of the properties of a Public Trust in accordance with the Act would revive the extinguished right to the property—Scope of S.52A.*

**D** Properties 1A to 1H were either purchased or endowed in the name of the deity Shri Vithal Rakhumai Dev by one Ambabai. One Pandurang Babaji Pawar was appointed as the manager (Vahivatdar) and one Bala Appa Yadav was appointed as a servant of the deity. On 1-6-1905, Ambabai executed a sale deed in respect of all the suit properties except property 1 E in favour of Pandurang and Bala. On 23-6-1907, Ambabai executed a second will reiterating that Pandurang and Bala as the Vahivatdar and the servant respectively. After the death of Ambabai on 12-3-1910, the properties were partitioned. Pandurang got property at 1C and Bala the rest. Pandurang died on 13-2-1911 and thereafter there were several transfers of the properties. The property at 1 E came in possession of plaintiff/appellant No. 1 who claimed to be the Vahivatdar and hereditary trustee of the deity. Plaintiff No. 1 treated the property at 1 E as his own and sold it on 17-9-1947 to original defendant Nos. 2 and 3. The plaintiffs instituted a suit in 1961 under section 50 and 51 of the Bombay Public Trusts Act, 1950, attacking the sales made in the years 1905 and 1947 as being void and not binding on the deity. The trial Court treating the suit as one filed by the deity held that the properties were endowed to the deity; the sale deeds were obtained by undue influence, without legal necessity and were not for the benefit of the Devasthan and hence not binding on the devasthan; the purchasers' possession over the land sold was therefore void and adverse. The suit was however dismissed on the ground that it was barred by limitation. In appeal, the finding of the trial Court in respect of property at 1 E alone was assailed without success.

**E** Dismissing the appeal by special leave, the Court

**F** HELD : (1) The law of limitation fixing a period of limitation for the initiation of any suit or proceeding is a procedural law and not a substantive one. If the claim was not barred and the right to the property was not extinguished when Section 52A came into force, then a suit instituted, thereafter could not be defeated under any of the Articles of the Limitation Act, 1908 or even of the new Limitation Act of 1963. In express terms, Section 52A overrides the provisions of the Limitation Act including the provisions in Section 28 of the Limitation Act, 1908. The overriding effect of Sec. 52A will have its play and operation, only if, by the time it came into force Section 28 had not extinguished the right to the property in question. Section 52A cannot have the effect of reviving an extinguished and lost claim and giving life to a dead horse.

[917 D-F]

**G** *Mahant Biseshwar Dass v. Sashinath Jhan and Ors.* A.I.R. 1943 Pat. 289 and *Balram Chunnilal and Ors. v. Durga Lal Shivnarain.* A.I.R. 1968 Madhya Pradesh, 81; approved.

**H** *Mst. Allah Rakhi and Ors. v. Shah Mohammad Abdur Rahim and Ors.,* A.I.R. 1934 PC 77, referred to

*Dev Chavate and Anr. v. Ganesh Mahadeo Deshpande and Anr.,* A. I. R. 1970 Bombay, 412, distinguished.

(2) The effect of Section 28 of the Limitation Act, 1908 is not only to bar the remedy but also to extinguish the right. [817 B]

(3) In the instant case, the effect of Section 28 of the Limitation Act was that the right to the property was extinguished resulting in conferment of a title by adverse possession on the persons in possession of the concerned properties. By such adverse possession those who had come in possession of these properties had acquired an indefeasible title under the Indian Limitation Act, 1908 and the claim had become barred long before the year 1955. The lost right to this property long before 1947 could not be saved and revived in the year 1955 or 1961 by Section 52A of the Bombay Public Trust Act. [817 A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 968 of 1968.

Appeal by Special Leave from the Judgment dated 21-7-1966 of the Bombay High Court in Appeal No. 86 of 1966 in F.A. No. 102 of 1963.

*R. B. Datar and (Miss) Farhat Quadiri* for the Appellant.

*A. G. Ratnaparkhi* for Respondents 1(a) to 1(c), 5, 6(a) to 6(g).

*Sharhad Manohar and Randhir Jain* for Respondents Nos. 2-3.

*K. L. Hathi and M. N. Shroff* for Respondent No. 7.

The Judgment of the Court was delivered by

UNTWALIA, J. This is a plaintiffs' appeal by special leave. The Trial Court dismissed the suit and the Bombay High Court maintained the dismissal in appeal by the plaintiffs.

The facts are a bit complicated. For the disposal of the present appeal, only a few of them need be stated in a narrow compass. One Ambabai, wife of Chintamanrao Ghatge purchased lands mentioned at items 1A to 1E in the plaint on the 3rd of December, 1896 in the name of the deity Shri Vitthal Rakhumai Dev. Lands at 1F, 1G and 1H were endowed by Ambabai to the deity by a deed of endowment executed in January or February 1905. Under this deed of endowment, one Pandurang Babaji Pawar was appointed as the Vehivatdar (Manager) and one Bala Appa Yadava was appointed as a servant of the deity. On the 1st of June, 1905, however, Ambabai executed a sale deed in respect of all the suit properties except property 1E in favour of Pandurang and Bala. On the 23rd of June, 1907 Ambabai executed a second Will and in that also she reiterated that Pandurang was being appointed as Vahivatdar and Bala a servant of the deity. Ambabai died on the 12th of March, 1910. After her death Pandurang and Bala partitioned the properties purchased by them by the sale deed dated 1-6-1905. Pandurang got property at 1C and the rest went to Bala. Pandurang died on the 13th of February, 1911. Thereafter his widow Radhabai sold the property at 1C to one Chinto Deshpande. Chinto sold it to original defendant no. 2. Property at 1E came in possession of the original plaintiffs—plaintiff no. 1 being Yeshwantrao Laxmanrao. He claimed to be a Manager and hereditary trustee of the deity. Original plaintiff no. 2 who died during the pendency of the suit and on whose death his legal representative was substituted claimed to be the hereditary Pujari of the deity. Property at 1E had come in possession of the plaintiffs long time back and plaintiff no. 1 treated the said property as his own.

**A** There were several other transfers *inter se* between the defendants and ultimately in one form or the other defendants 1 to 6 came to hold one kind of interest or the other in the various suit properties. The plaintiffs instituted the suit in the year 1961 with the permission of the Charity Commissioner, Maharashtra defendant no. 7. The suit was instituted under sections 50 and 51 of the Bombay Public Trusts Act, 1950—hereinafter called the Act, to recover possession of the suit properties from

**B** defendants 1 to 6. Property at 1E have been sold by plaintiff no. 1 on the 17th of September, 1947 to original defendant nos. 2 and 3. The sales made in the year 1905 as also in the year 1947 were attacked as being void and not binding on the deity. Although specifically the deity was not impleaded as a plaintiff in the suit, as observed by the District Judge, Sitara who tried the suit in the first instance, to all intents and purposes the suit was by the deity and the two plaintiffs. Defendants

**C** contested the suit on several grounds. Several issues were framed and tried by the learned District Judge. He held that the properties in suit were bequeathed by Ambabai to the deity. The sale deed dated 1-6-1905 was obtained by undue influence. It was without legal necessity and was not for the benefit of the Devasthan. It was, therefore, held to be not binding on the Devasthan. The purchasers' possession over the land sold was, therefore, held to be void and adverse. Same were the findings

**D** of the Trial Court in respect of the property at 1E. The suit was, however, dismissed on the ground that it was barred by limitation.

On appeal by the plaintiffs, only limited submissions were made by them in the High Court. The finding of the Trial Court that the respective purchasers were in adverse possession of the properties at 1A to 1D and 1F to 1H was not attacked. The finding of the Trial Court, however, in respect of property at 1E was assailed but without success. The

**E** High Court dismissed the appeal.

Mr. R. B. Datar, learned counsel for the appellants put in great industry in arguing this appeal and took us to the various facts and facets of the case. Having appreciated them all, the points which ultimately crystallized in argument are the following :—

- F** (1) Section 52A was introduced in the Act by Bombay Act 23 of 1955 and in view of the said provision of law, there was no limitation for recovery of the properties of a Public Trust in accordance with the Act.
- (2) A suit for the recovery of the properties was not barred in the year 1955 when section 52A came into force.
- G** (3) That in any view of the matter, claim regarding 1E of the property was obviously not barred in the year 1955 and could not be held to be so in suit instituted in the year 1961 after coming into force of section 52A.

Learned counsel for the respondents combated all the submissions made on behalf of the appellants.

**H** In our judgment, there is no substance in any of the points urged on behalf of the appellant. The possession of the purchasers was adverse in respect of all the properties at 1A to 1D and 1F to 1H from the very

beginning. By such adverse possession those who had come in possession of these properties had acquired an indefeasible title under the Indian Limitation Act, 1908. It is not necessary to decide in this case as to which of the articles in the first Schedule of the said Limitation Act applied to this case. Whether it was Articles 134, 134A, 134B, 142 or 144 the claim had become barred long, long before the year 1955. The effect of section 28 of the Limitation Act was that right to the property was extinguished resulting in conferment of a title by adverse possession on the persons in possession of the concerned properties. It is well-known that the effect of section 28 of the Limitation Act is not only to bar the remedy but also to extinguish the right. The right to the property itself was dead and gone. It could not be revived by a provision like the one contained in section 52A of the Act.

Section 52A reads as follows :

“Notwithstanding anything contained in the Indian Limitation Act, 1908, no suit against an assignee for valuable consideration of any immovable property of the Public trust which has been registered or is deemed to have been registered under this Act for the purpose of following in his hands, such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.”

It is a well established proposition of law that the law of limitation fixing a period of limitation for the initiation of any suit or proceeding is a procedural law and not a substantive one. Section 52A had, by no stretch of imagination, the effect of reviving an extinguished and lost claim and giving life to a dead horse. If the claim was not barred and the right to the property was not extinguished when Section 52A came into force, then a suit instituted thereafter could not be defeated under any of the Articles of the Limitation Act of 1908 or even of the new Limitation Act of 1963. In express terms it over-rides the provisions of the Limitation Act including the provision in section 28 of the Limitation Act, 1908. But then the over-riding effect of section 52A will have its play and operation, only if, by the time it came into force, section 28 had not extinguished the right to the property in question. Otherwise not. In *Mahant Biseshwar Dass v. Sashinath Jhan and others*(<sup>1</sup>) a Bench of the Patna High Court pointed out that where the right of the plaintiff had become barred by limitation before the Amending Act of 1929 was passed the mere institution of the suit after 1929 cannot have the effect of reviving that right. By the Amending Act of 1929 in section 10 of the Limitation Act it was provided that no suit instituted against a person in whom property had become vested in trust for any specific purpose or against his legal representatives or assigns for the purposes mentioned in the section would be barred by any length of time. From the category of assigns, assigns for valuable consideration were left out. The question before the Patna High Court in the case referred to above was whether the amendment brought about in the year 1929 could revive a right which was extinguished, dead and gone prior to 1929. In that connection the answer given was in the negative. The

(1) A.I.R. 1943, Patna, 289.

**A** view so expressed in the Patna decision is perfectly sound and correct, and no decision to the contrary was brought to our notice. Under section 52A of the Bombay Act even assignees for valuable consideration have been roped in to save the suit from the bar of any period of limitation. But then on an application of the principle referred to about it is plain that section 52A could not have the effect of reviving an extinguished right.

**B** In *Mt. Allah Rakhi and others v. Shah Mohammad Abdur Rahim and others*<sup>(1)</sup> Sir Lord Lancelot Sanderson delivering the judgment on behalf of the Board ruled that in regard to a suit brought on 29th January, 1926 "the question whether it was then barred by limitation must depend upon the law of limitation which was applicable to the suit at that time." The provisions of the Amendment Act of 1929 which had come into force on the 1st of January, 1929 were held to be inapplicable.

**C** Of course, even in the light of the old section it was held that the suit was not barred by limitation and the decree of the High Court was affirmed. Krishnan J. in the case of *Balram Chunnilal and others v. Durgalal Shivnarain*<sup>(2)</sup> expressed a view identical to the one expressed by the Patna High Court (vide end of paragraph 36 page 86 column 10).

**D** Mr. Datar placed reliance upon the decision of the Bombay High Court in *Dev Chavata and another v. Ganesh Mahadeo Deshpande and another*<sup>(2)</sup> in order to take advantage of section 52A of the Act. The ratio of the case has not to be appreciated in the background of the facts found therein. The principles of law as enunciated cannot be fully and squarely applied. But yet the decision, if we may say so with respect, is correct. This would be on the footing that the decision given by the Assistant Charity Commissioner under section 79 read with section 80 of the Act was conclusive and final. He had exclusive jurisdiction to decide the question as to whether the suit land belonged to the trust. He had so decided it on November 5, 1954. The suit was filed on July 21, 1955. In that view, the High Court was right in holding that a suit filed under section 50 of the Act was not barred under section 52A because the decision of the Assistant Charity Commissioner given in 1954 had declared the property to be a trust property and which decision was final.

**E**

**F**

For the reasons stated above, it is clear that the appellants could not take advantage of section 52A of the Act in respect of the properties at 1A to 1D and 1F to 1G. Argument put forward by Mr. Datar to show that the claim was not barred in the year 1955 when section 52A came into force was absolutely devoid of any substance. It was against the stand taken in the High Court and does not merit any detailed discussion in our judgment.

**G**

Coming to property at 1E now, we must confess at the outset that during the course of argument at one time, we thought that this property having been sold in the year 1947 by plaintiff no. 1, the right to

**H** (1) A.I.R. 1934 Privy Council, 77

(2) A.I.R. 1968 Madhya Pradesh, 81.

(3) A.I.R. 1970 Bombay, 412.

the property was not extinguished under section 28 of the Limitation Act in the year 1955. Therefore, although the suit was instituted in the year 1961, beyond 12 years of 1947, it would perhaps be saved under section 52A from the bar of limitation. But on a closer scrutiny and on appreciation of the argument of the other side in the light of the finding recorded by the High Court, we did not feel persuaded to give relief to the appellants even in regard to property at 1E. The High Court has found that plaintiff no. 1 had acquired title to property 1E by adverse possession long before 1947. He dealt with this property as his own. Even when the trust was declared as a Public Trust by the Charity Commissioner in or about the year 1954, the property at 1E was not shown as a trust property. The sale, therefore, in the year 1947 by plaintiff no. 1 conveyed a good title to the purchaser. The lost right to this property long before 1947 could not be saved and revived in the year 1955 or 1961 by section 52A of the Act. We, therefore, hold in agreement with the High Court that the suit was barred by limitation in regard to this property also.

In the result, we dismiss this appeal, but in the circumstances make no order as to costs.

S.R.

*Appeal dismissed.*