

A VASANTIBEN PRAHLADJI NAYAK AND ORS.
v.
SOMNATH JUIJIBHAI NAYAK AND ORS.

MARCH 9, 2004

B [ASHOK BHAN AND S.H. KAPADIA, JJ.]

C *Limitation Act, 1963—Section 65 Explanation (a)—Claim of ownership of suit land by appellants after partition—Respondents claiming ownership by adverse possession and on ground of limitation—Courts below holding in favour of the respondent—Correctness of—Held, the co-sharer is not conferred a new title on partition but has an antecedent title—Hence, the limitation starts from the date the possession became adverse and not from the date of commencement of the right of ownership.*

D Appellants-plaintiffs filed a suit before trial court for declaration of title over suit land, recovery of possession thereof and for permanent injunction from interference with their possession, against respondents-defendants. The appellants contended before the trial court that the suit land was an ancestral property belonging to the father-in-law of appellant no.1 and after his death, the property vested with the husband of appellant no.1 being his son; that during the lifetime of the husband of appellant no.1, the respondents sought permission to make construction on the suit-land which was rejected by her husband; and that after the death of the husband, the respondents started constructing a compound wall without her permission. The respondents contended that they were in possession of the suit land for more than twelve years and that they were owners by adverse possession; and that the suit was barred by limitation. The trial court dismissed the suit on the ground that the appellants have failed to prove their title over the suit land. The first appellate court allowed the appeal of the appellants holding that they had identified the suit land and proved their title to the suit land.

G High Court, keeping the second appeal pending, remanded the matter to the first appellate court to decide the issue of limitation and adverse possession. On remand of the above issues, the first appellate court held that on facts and evidence the respondents acquired title of suit land

H 918

by way of adverse possession and that the suit was barred by law of limitation. The High Court confirmed the findings of the first appellate court and allowed the second appeal of the respondents. A

In appeal to the Court, the appellants contended that they became owners of the suit land as reversioners under registered deed of partition only in 1965 and consequently the suit filed in 1968 by the appellants was not barred by limitation; that the adverse possession in respect of suit land did not begin to run against the appellants prior to 1965; and that the respondents failed to prove three circumstances viz. hostile intention, long and uninterrupted possession and exercise of the right of exclusive ownership openly and to the knowledge of the owner, to establish ouster in claiming adverse possession. B C

Dismissing the appeal, the Court

HELD: 1.1. Under the common law, there are two types of estates namely, estates in possession and estates in expectancy. Estates in remainder/reversion are estates in expectancy as opposed to estates in possession. Consequently, adverse possession against a life-tenant will not bar the reversioner/remainder from succeeding to the estate on the demise of the life-tenant. This is the reason for enacting explanation (a) to Article 65 of the said Act, which has no application to the facts of the case. D

[922-G-H] E

Ram Kisto Mandal and Anr. v. Dhankisto Mandal, [1969] 1 SCR 342, distinguished.

1.2. Partition is really a process by which a joint enjoyment of the property is transformed into an enjoyment severally. In the case of partition, each co-sharer has an antecedent title and, therefore, there is no conferment of a new title. In the circumstances, the appellants cannot be heard to say that they became the owners of the property only when the partition deed was executed on 29.11.1965. Lastly, the appellants had asserted not only their own possession but also the possession of the husband of appellant no.1 prior to his death. The starting point of limitation for adverse possession cannot be taken as 29.11.1965 and one has to take the date when the respondents' possession became adverse. F G

[923-A-D]

Hanamgowda v. Irgowda, AIR (1925) Bom 9, approved. H

A *Transfer of Property Act by Mulla 9th Edition, referred to.*

B 1.3. The defendants have to prove three elements viz. hostile
intention, long and uninterrupted possession and exercise of the right of
exclusive ownership openly and to the knowledge of the owner, to establish
ouster in cases involving claim of adverse possession. However, in the
C present case there is a concurrent finding of fact recorded by the courts
below to the effect that the respondents are in possession of the suit land
from 1935 or in any event from 1941; that they have paid revenue cess
from 1940; that they have paid property taxes; that their names were
D recorded in the revenue records and they were granted permission by the
panchayat to construct compound wall. Moreover, in her deposition before
the trial Court, appellant no.1 had deposed that her husband had died six
years prior to the institution of suit; that the suit land was in possession
of her father-in-law and after his death it came in possession of her
husband; that during the life time of her husband, the defendants had told
her husband to allow them to construct a building on the land which he
refused and that the respondents constructed the compound wall without
their permission. In view of the above concurrent findings of fact recorded
by the courts below on the issue of adverse possession, there is no reason
to interfere in the matter. [923-E-H; 924-A]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6432 of 1998.

From the Judgment and Order dated 28.4.98 of the Gujarat High Court
in S.A. No. 360 of 1978.

Ramesh Singh for Ms. Meenakshi Arora for the Appellants.

F R.P. Bhatt, M.N. Shroff and Chirag M. Shroff for the Respondents.

The Judgment of the Court was delivered by

G KAPADIA, J. Appellants (Plaintiffs) filed a suit bearing no.116 of
1968 in the court of Civil Judge, Narol for a declaration that they were
owners of ancestral house site land bearing G.P. No.497 in Sarkhej, district
Ahmedabad and for recovery of possession thereof from the respondents
(defendants) and also for permanent injunction restraining respondents from
interfering with their possession over the disputed land. According to the
appellants, the suit land was ancestral property belonging to father-in-law of
H Vasantiben (appellant no.1) and after his death the property came in possession

of her husband. According to the appellants, in the lifetime of the husband of appellant no.1, the respondents used to tell the husband of appellant no.1 to allow them to make construction on the land. According to appellant no.1, her husband did not permit the respondents to make construction till his death, i.e. six years prior to the institution of the suit. That even before his demise, the respondents used to tell appellant no.1 to donate the land to the community which she refused and soon thereafter the respondents started constructing a compound wall without her permission. In the circumstances, she filed a suit on 25th March, 1968 to prevent the respondents from disturbing her possession.

The respondents *inter alia* denied in the suit that the husband of appellant no.1 was in possession of the suit land till he died or that after his demise, the appellants were in possession of the suit land. In the suit, they contended that they were in possession of the suit land for more than twelve years and that they were owners by adverse possession. They also contended that the suit was barred by limitation. In the suit, there was a dispute regarding the identity of the land. In the suit, there was a dispute regarding title of the appellants over the suit land. By the judgment and order dated 10th November, 1975, the trial court dismissed the suit on the ground that the appellants have failed to prove their title over the suit land. Being aggrieved, the appellants went by way of civil appeal no.133 of 1976 to the District Court, Ahmedabad which came to the conclusion that the appellants had identified the suit land. Further, the District Court came to the conclusion that the appellants had proved their title to the suit land. Consequently, the appeal was allowed vide judgment and order dated 27th March, 1978.

Being aggrieved, the respondents herein went by way of second appeal under section 100 CPC to the High Court being appeal no.360 of 1978. By judgment and order dated 22nd January, 1997, the High Court came to the conclusion that the lower appellate court could not have passed the decree for possession in favour of the appellants without deciding the issue of limitation and adverse possession. Consequently, keeping the Second Appeal pending before it, the High Court called for the findings on the above two issues from the District Court, Ahmedabad. On remand of the above issues, the District Court found that the respondents were in possession since 1934 as indicated by the books of accounts and revenue receipts for payments made to its revenue assessment. The District Court further found that the respondents

A have been paying land revenue from 1940. The District Court further found that the gram panchayat had even permitted the respondents to construct the compound wall vide a resolution (Ex.132). In the circumstances, the District Court came to the conclusion that the respondent had acquired title by way of adverse possession. On the point of limitation, the District Court found that the respondents were in possession from 1935 or in any event from 1941

B whereas the suit has been filed only on 25th March, 1968 for possession and consequently the suit was barred by law of limitation. Therefore, both the issues were decided in favour of the respondents herein by the District Court vide judgment dated 30th April, 1997. The High Court which was seized of the second appeal no.360 of 1978 after hearing the parties confirmed the findings of the District Court on above two issues and accordingly disposed of the second appeal vide impugned judgment dated 28th April, 1998. Hence,

C the original plaintiffs have come by way of civil appeal to this Court.

D Shri Ramesh Singh, learned counsel appearing on behalf of the appellants submitted that the appellants became owners of the suit land as reversioners under registered deed of partition dated 29th November, 1965 and consequently the suit filed by the appellants was neither barred by limitation nor by adverse possession. He contended that the High Court had erred in holding that adverse possession in respect of suit land begin to run against the appellants prior to

E 29th November, 1965. In this connection, he has placed reliance on explanation (a) to Article 65 of the Limitation Act (hereinafter referred to as "the said Act"). In support of his above argument, learned counsel for the appellants has also placed reliance on the judgment of this Court in the case of *Ram Kisto Mandal and Anr. v. Dhankisto Mandal*, reported in [1969] 1 SCR 342].

F We do not find merit in the above argument advanced on behalf of the appellants. In the case of *Ram Kisto Mandal and Anr. v. Dhankisto Mandal*, (supra), it has been held by this Court that the right of the reversioner to recover possession of the property within twelve years from the death of the widow is not only based on provisions of the limitation act but on the principles

G of Hindu Law and the general principles that the right of a reversioner is in the nature of *spes successionis* (estate in expectancy) and such reversioner does not trace his title through the widow. Under the common law, there are two types of estates namely, estates in possession and estates in expectancy. Estates in remainder/reversion are estates in expectancy as opposed to estates

H in possession. Consequently, adverse possession against a life-tenant will not

bar the reversioner/remainder from succeeding to the estate on the demise of the life-tenant. This is the reason for enacting explanation (a) to Article 65 of the said Act, which has no application to the facts of this case.

At this stage, it is important to bear in mind that partition is really a process by which a joint enjoyment of the property is transformed into an enjoyment severally. In the case of partition, each co-sharer has an antecedent title and, therefore, there is no conferment of a new title. (See *Transfer of Property Act* by Mulla 9th Edition Page 77). In the circumstances, the appellants cannot be heard to say that they became the owners of the property only when the partition deed was executed on 29th November, 1965. Lastly, the facts above-mentioned show that the appellants had asserted not only their own possession, they had also asserted the possession of Prahiaji (husband of appellant no.1 and father of remaining appellants) prior to his death. In the case of *Hanamgowda v. Irgowda*, reported in AIR (1925) Bom. 9], it has been held that in cases of adverse possession, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but it commences from the date when the defendants' possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession cannot be taken as 29th November, 1965 and one has to take the date when the respondents' possession became adverse. For all the above reasons, there is no merit in the above arguments advanced on behalf of the appellants.

Shri Ramesh Singh, learned counsel appearing on behalf of the appellants next contended that in the present case the respondents have failed to prove the ouster along with other three circumstances, namely, hostile intention; long and uninterrupted possession; and exercise of the right of exclusive ownership openly and to the knowledge of the owner. We do not find any merit in this argument. It is correct to say that the defendants have to prove three elements mentioned above to establish ouster in cases involving claim of adverse possession. However, in the present case, there is a concurrent finding of fact recorded by the courts below to the effect that the respondents are in possession of the suit land from 1935 or in any event from 1941; that they have paid revenue cess from 1940; that they have paid property taxes; that their names were recorded in the revenue records and they were granted permission by the panchayat to construct compound wall. Moreover, in her deposition before the trial Court, appellant no.1 had deposed that her husband had died six years prior to the institution of suit; that the suit land was in

A possession of her father-in-law and after his death it came in possession of Prahlad (husband); that during the life time of Prahlad, the defendants had told Prahlad to allow them to construct a building on the land which he refused and that the respondents constructed the compound wall without their permission. In view of the above concurrent findings of fact recorded by the courts below on the issue of adverse possession, we do not see any reason to interfere in the matter.

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For the aforesated reasons, civil appeal stands dismissed, with no order as to costs.

B.S.

Appeal dismissed.