

CASE NO.:
Appeal (civil) 1558 of 1999

PETITIONER:
Jagat Ram

RESPONDENT:
Varinder Prakash

DATE OF JUDGMENT: 22/03/2006

BENCH:
B.P. Singh & Altamas Kabir

JUDGMENT:
JUDGMENT

B.P. Singh, J.

This appeal by special leave is directed against the judgment and order dated 3.10.1997 of the Single Judge of the High Court of Himachal Pradesh, Shimla in regular second appeal no. 410 of 1991. The appellant before us is the plaintiff whose suit for possession was dismissed by the High Court holding that the suit was barred by limitation. The correctness of the judgment is impugned before us.

The facts not in dispute are as follows:

One Sunder, owner of the suit land, died leaving behind his widow Smt. Kirpi and two daughters, namely Smt. Manshan and Smt. Sita Devi. The appellant-plaintiff, namely Jagat Ram, is the son of Smt. Manshan while Varinder Prakash claimed to be son of Smt. Sita Devi but adopted by Smt. Kirpi - widow of Sunder.

Sunder had executed, during his life time, a gift deed on 23.6.1920 in favour of his daughter Smt. Manshan (mother of the plaintiff). He died on 17.9.1941. On 3rd August, 1945, Smt. Kirpi, widow of Sunder, filed suit against Smt. Manshan which finally resulted into a compromise to the effect that Smt. Kirpi will enjoy the suit property as long as she was alive and after her death the property will be inherited by her daughter Manshan. It appears that on 23.8.1958, Smt. Kirpi executed an adoption deed in favour her second daughter's son, namely Varinder Prakash - defendant and also executed gift deed in his favour. Smt. Manshan, mother of the plaintiff, filed a suit on 27.5.1959 for cancellation of the gift deed and for a declaration that the adoption was illegal. The suit was decreed by the Trial Court on 16.1.1960. On 5.9.1967, Smt. Kirpi, widow of Sunder, died. The decree obtained by Smt. Manshan was ultimately challenged in Letters Patent Appeal before the High Court by the defendant, which was dismissed on 18.11.1981.

After the dismissal of the Letters Patent Appeal on 18.11.1981, Smt. Manshan filed the instant suit for recovery of possession of the suit land on 14.12.1982. The suit was dismissed by the Trial Court by judgment and decree dated 24.6.1986 holding that the suit was barred by limitation. However, the judgment and decree of the Trial Court was upset by the Additional District Judge by judgment and decree of 19th September, 1991. The aforesaid judgment and decree of the appellate Court was challenged before the High Court in the second appeal and the same was allowed by the High Court by its judgment dated 3rd October, 1997. The High Court held that under the compromise of 3rd August, 1945 a right was conceded in favour of Kirpi to enjoy the suit land during her life time. The High Court further held that Kirpi had no pre-existing right of maintenance, and therefore, the case was covered by Section 14(2) of the Hindu Succession Act and not by Section 14(1). However, the High Court held that the suit

filed by the appellant-plaintiff on 14.12.1982 was barred by limitation since the widow had died on 5.9.1967 and the suit for possession was not filed within 12 years of her death.

Learned counsel for the appellant urged before us that while under the old Limitation Act, Article 141 governed the case, so far as the Limitation Act of 1963 is concerned the legal position has changed. The High Court failed to notice this change in law and erroneously held on the basis of the limitation prescribed under the old Limitation Act that the suit was barred by limitation.

In our view, the High Court was right in holding that the suit was barred by limitation. Article 65 of the Limitation Act, 1963 prescribes the period of limitation for possession of immovable property or any interest based on title where the suit is by a Hindu or Muslim entitled to possession of immovable property on the death of a Hindu or Muslim female. Article 65(b) in express terms provides that "the possession of the defendant shall be deemed to become adverse only when female dies". The limitation prescribed is 12 years beginning from the date when the possession of the defendant becomes adverse to the plaintiff. Learned counsel submitted that in view of Article 65 of the Limitation Act, 1963 the suit had to be filed within 12 years from the date on which the possession of the defendant became adverse and, therefore, it was immaterial as to when the Hindu female died. It is not possible to sustain the contention because the Article itself provides that the possession of the defendant shall be deemed to become adverse only when the female dies. Thus, there is no scope for the argument that limitation does not run from the date on which the Hindu female died and that it would start running from some other date. In our view, the High Court has rightly held that the suit should have been filed by the plaintiff within 12 years of the death of the Hindu female, namely Smt. Kirpi, and the same having not been filed within 12 years was barred by limitation. Much was sought to be made of the pending litigation relating to the adoption and gift deed executed in favour of the defendant. It was contended before us that since the matter was still pending and though the plaintiff's suit had been decreed on 16.1.1960, the plaintiff could not have filed the instant suit till such time as the Letters Patent Appeal was not dismissed by the High Court i.e. till 18.11.1981. The submission has no substance because in the litigation which was pending before the High Court the plaintiff had not claimed possession of the suit land. The High Court has rightly pointed out that even if the plaintiff had sought amendment of the pleadings in the pending matter and claimed decree for possession, the legal position would have been different. He having not done so, he should have filed the suit for possession of the suit land within 12 years of the death of Smt. Kirpi, which he failed to do.

We find no reason to set aside the judgment of the High Court. This appeal is therefore dismissed.