

CASE NO.:
Appeal (civil) 5864 of 1999

PETITIONER:
RAMIAH

RESPONDENT:
N. NARAYANA REDDY (DEAD) BY LRS.

DATE OF JUDGMENT: 10/08/2004

BENCH:
ASHOK BHAN & S.H. KAPADIA.

JUDGMENT:
J U D G M E N T

KAPADIA, J.

Being aggrieved by the judgment and order dated 27th May, 1997 passed by the High Court of Karnataka in R.F.A. No.412 of 1988, the original plaintiff has come to this Court by this appeal. By the impugned judgment, the High Court has dismissed the suit filed by the plaintiff.

The short question which arises for consideration in this appeal by special leave is whether the plaintiff has proved that he was in possession of the suit land within 12-years of the date of the suit?

The facts on which this appeal has arisen are as follows:

One Bayyanna was owner of the suit land in Survey No.19/1 admeasuring 3 acres 12 gunthas. The suit land was Inam land. Bayyanna sold the suit land to N. Narayana Reddy (since deceased) father of the respondents herein, vide registered sale deed dated 4.11.1958. N. Narayana Reddy had instituted suit no.357/60 in the Court of Principal Second Munsiff, Bangalore for recovery of possession based on title and for permanent injunction against the appellant herein on the ground that the appellant was trying to interfere with his possession.

The defence of the appellant herein in the above suit was that he had purchased the suit land on 27.11.1959 from B. Bayyanna and that he was in possession of the suit land. His further defence was that the suit land was Inam land and that he was registered as Khadim tenant by the Inam Abolition Authorities. By judgment and order dated 7.4.1971, the Principal Munsiff, Bangalore partly decreed the suit filed by N. Narayana Reddy holding him to be the owner of only 1 acre 21 gunthas and not of the entire land admeasuring 3 acres 12 gunthas. However, he was found to be in possession of the entire 3 acres 12 gunthas and, therefore, the Principal Munsiff granted permanent injunction in favour of N. Narayana Reddy restraining the appellant herein from interfering with the possession of N. Narayana Reddy on the entire suit land admeasuring 3 acres 12 gunthas with liberty to the appellant herein to take steps to recover possession of 1 acre 21 gunthas out of the total area of 3 acres 12 gunthas by following due process of law. By the aforesaid judgment, the Principal Munsiff, Bangalore came to the conclusion that N. Narayana Reddy was in possession of the entire area admeasuring 3 acres 12 gunthas; that the entire area was Inam lands and since an area admeasuring 1 acre 21 gunthas out of total area admeasuring 3 acres 12 gunthas was regranted by the Deputy Commissioner to the appellant herein, N. Narayana Reddy was not the owner of the entire

area admeasuring 3 acres 12 gunthas.

Being aggrieved by the judgment and order dated 7.4.1971, N. Narayana Reddy preferred Regular Appeal No.45 of 1971. The First Appellate Court dismissed the said Regular Appeal vide judgment dated 13.1.1975. Thereafter, N. Narayana Reddy filed Regular Second Appeal No.801 of 1975 in the High Court of Karantaka, which came to be dismissed on 24.11.1982. Consequently, the judgment and decree passed in suit no.357/60 dated 7.4.1971 reached finality on 24.11.1982.

On 8.5.1984, the appellant herein filed the present suit no.1518 of 1984 i.e. within two years from the date of the decision of the High Court dated 24.11.1982 in RSA No.801/75 filed by N. Narayana Reddy, for possession of land admeasuring 1 acre 21 gunthas. The said suit was instituted in the Court of Additional City Civil Judge, Bangalore (hereinafter for the sake of brevity referred to as "the trial Court"). In the said suit, it was held that the appellant herein admittedly stood ousted in 1971 and, therefore, the said suit was barred by limitation as it was filed after 13 years from dispossession. Consequently, the trial Court dismissed the suit.

Being aggrieved, the appellant herein preferred Regular First Appeal No.412 of 1988 under Section 96 of CPC in the High Court of Karnataka. By the impugned judgment, the High Court confirmed the dismissal of the suit by the trial Court by holding that the present suit has been filed much beyond 12 years. By the impugned judgment, the High Court rejected the contention advanced on behalf of the appellant that the period of limitation commenced only after the decision of the High Court of Karantaka in RSA No.801/75, filed by N. Narayana Reddy, decided on 24.11.1982. Hence, this civil appeal.

Mr. P. R. Ramasesh, learned counsel appearing on behalf of the appellant contended that the plaintiff had instituted the suit for possession based on title and not on the basis of previous possession and, therefore, under article 65 of the Limitation Act, 1963 the suit was well within the time as the limitation of 12-years commenced from the date when the possession of the defendant became adverse to the plaintiff. He contended that article 64 was not applicable to the facts of the present case as the suit instituted by the appellant for possession of immovable property was based on title and not on the basis of previous possession. It was further urged that the appellant was entitled to the benefit of section 14 of the Limitation Act, 1963, as the earlier litigation instituted by N. Narayana Reddy came to an end only on 24.11.1982 when the High Court in RSA No.801/75 confirmed the decree dated 7.4.1971 passed by the Principal Munsiff in suit no.357/60.

We do not find any merit in the aforestated arguments. Article 64 of the Limitation Act, 1963 (Article 142 of the Limitation Act, 1908) is restricted to suits for possession on dispossession or discontinuance of possession. In order to bring a suit within the purview of that article, it must be shown that the suit is in terms as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. Article 65 of the Limitation Act, 1963 (Article 144 of the Limitation Act, 1908) on the other hand is a residuary article applying to suits for possession not otherwise provided for. Suits based on plaintiffs' title in which there is no allegation of prior possession and subsequent dispossession alone can fall within article 65. The question whether the article of limitation applicable to a particular suit is article 64 or article 65 has to be decided by reference to pleadings. The plaintiff cannot invoke article 65 by suppressing material facts. In the present case, in suit no.357/60 instituted by N. Narayana Reddy in the Court of Principal Munsiff, Bangalore, evidence of the appellant herein was recorded. In

that suit, as stated above, the appellant was the defendant. In his evidence, appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in that suit indicates ouster from possession of the appellant herein. In the present suit instituted by the appellant, he has glossed over this fact. In the circumstances, both the Courts below were right in coming to the conclusion that the present suit was barred by limitation. The appellant was ousted in 1971. The appellant had instituted the present suit only on 8.5.1984. Consequently, the suit has been rightly dismissed by both the Courts below as barred by limitation.

In the case of Ram Surat Singh & others v. Badri Narain Singh reported in [AIR 1927 Allahabad 799], it has been held that if the suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed, then he must show possession within 12-years under article 142 (now article 64) of the Limitation Act. To the same effect is the ratio of the judgment in the case of Mohammad Mahmud v. Muhammad Afaq & others reported in [AIR 1934 Oudh 21]. In the commentary on the Limitation Act by Sanjiva Row [Ninth Edition \026 IInd Volume page 549] it has been stated that the question as to which of the two articles would apply to a particular case should be decided by reference to pleadings, though the plaintiff cannot be allowed by skilful pleading to avoid the inconvenient article. On facts of the case, we find that the article 64 is applicable to the present suit. Consequently, the suit has been rightly dismissed by both the Courts below.

In the present case, on the facts of this case as stated above, section 14 of the Limitation Act, 1963 cannot be invoked by the appellant as the appellant herein had never challenged the findings on possession recorded by the Principal Munsiff vide decree dated 7.4.1971. In the present case, earlier suit no.357/60 was filed by the said N. Narayana Reddy, which was partly decreed and, therefore, he preferred Regular Appeal No.45/71 which was dismissed by the First Appellate Court on 13.1.1975. Thereafter, N. Narayana Reddy filed RSA No.801/75 which was dismissed by the High Court on 24.11.1982. All throughout this period, although the appellant had the right to recover possession from N. Narayana Reddy to the extent of 1 acre 21 gunthas in accordance with law, the appellant herein did not take any steps to sue for possession till 8.5.1984. Consequently, the appellant was not entitled to the benefit of section 14 of the Limitation Act, 1963.

For the foregoing reasons, we do not find any merit in this civil appeal and the same is accordingly dismissed, with no order as to costs.