

PETITIONER:
MAMO AND ANR.

Vs.

RESPONDENT:
COMMITTEE OF MANAGEMENT SHRI GURDWARA GAINB^AND ORS.

DATE OF JUDGMENT: 01/12/1999

BENCH:
S.P.Kurdukar, Syed Shah Mohammed Quadri

JUDGMENT:

SYED SHAH MOHAMMED QUAPRI, J.

The judgment and decree under challenge in this appeal, by special leave, were passed in Second Appeal No. 1044 of 1378 by the High Court of Punjab & Haryana, Chandigarh, on December 16, 1987. The appeal arises out of the suit filed by respondent No.1 (referred to in this judgment as 'the plaintiff') against the appellants and respondent Nos. 2 to 4 who are the legal representatives of one Pritam Singh (referred to in

this judgment as 'the defendants') for recovery of possession of agricultural land measuring 160 Kanals 16 Marlas situated at village Salbehra tehsil district Patiala (hereinafter referred to as 'the suit land').

On April 22, 1969, the suit was filed on the basis of title of the plaintiff. The suit land originally belonged to one Ram Singh who gifted the same in favour of Gurdawara Sahib in 1951 while it was being held by Pritam Singh as a mortgagee. Later, the mortgage was redeemed by Ram Singh and the suit land was mutated in the revenue records in the name of Gurdawara Sahib but it continued in the possession of Pritam Singh. After declaration of Gurdawara as a Sikh Gurdawara, Shiromani Gurdawara Prabandhak Committee, Amritsar, filed a suit against the local Committee for recovery of possession of the suit land which was under "its control and management. That suit was decreed on December 1, 1964. In execution of the decree actual possession of the suit land could not be taken from Pritam Singh, instead only symbolic possession was given to Shiromani Gurdawara Prabandhak Committee. The plaintiff was notified by the Punjab Government in 1965. It then initiated proceedings against Pritam Singh before Assistant Collector, 1st Grade for recovery of rents. On October 31, 1968, the claim was dismissed holding that Pritam Singh was neither the mortgagee nor the tenant of the suit land. Sometime thereafter the said Pritam Singh died and the present suit was brought against the defendants on April 22, 1969.

The suit was resisted by the defendants denying the ownership of the plaintiff, the knowledge of the earlier suit and taking of symbolic possession of the suit "and from the said Pritam Singh. It was pleaded that the suit was barred by limitation under Section 28 of the Sikh Gurdwaras Act, 1925 and that till his death Pritam Singh was in

possession of the suit land and thereafter they had been adverse possession thereof, so the title of plaintiff, if any, extinguished.

On considering the entire evidence on record, the trial court held that under Section 28 of the Sikh Gurdwaras Act the suit was beyond limitation and that the defendants would be deemed to be in adverse possession from 1952 'and for that reason also the suit was barred by limitation. Thus, the suit was dismissed on November 4, 1974. -.

The plaintiff carried the matter in appeal before the Additional District Judge, Patiala. The Appellate Court framed the following additional issue No.9-A and called for finding from the trial court.

"9-A. Whether the defendants are in adverse possession of the property in dispute and if so, since when and what is its effect?"

The trial Court returned the finding that;- the defendants failed to prove adverse possession of the suit land. That finding was accepted by the First Appellate Court and it was held that under the Limitation Act the suit was not barred. However, agreeing with the trial court that under Section 28 of the Sikh Gurdwaras Act the suit was barred, the first Appellate Court dismissed the appeal on March 8, 1978,

The plaintiff filed Second Appeal No. 1044 of 1378 in the High Court of Punjab and Haryana challenging the correctness of the judgment and decree of the First Appellate Court. The High Court took the view that the suit was based on title and not on dispossessor so it was for the defendants to prove that they became owner of the suit 1 and by adverse possession which they failed to do; it expressed agreement with the finding of the first Appellate Court that the suit was not barred under the Limitation Act and held that on the ground of limitation prescribed in Section 28 of the Sikh Gurdwaras Act, the plaintiff could not be non-suited. The High Court thus allowed the Second appeal and decreed the suit on December 16, 1987. It is

against that judgment and decree that this appeal is filed.

Mr. Ashok K. Mahajan, learned counsel for the appellant, contended that under Section 29(2) of the Limitation Act, the period of limitation prescribed under the special Act alone would apply and in view of the provision of Section 28(1) of the Sikh Gurdwaras Act, the suit ought to have been filed within ninety days of the notification dated November 1, 1962 but it was filed on April 22, 1969 so it was clearly barred; that the High Court wrongly held that the suit was within limitation under the Limitation Act and allowed the Second Appeal.

Mr. Hardev G Singh, learned senior counsel for the first respondent, argued that the suit contemplated under Section 28 of the Sikh Gurdwaras Act was earlier filed against the local Committee and that the present suit was filed on the basis of the title, therefore, it would be governed by the Limitation Act and that in view of findings of the courts below the suit was rightly held to be within limitation by the High Court.

On. the contentions raised at. the hearing and in the written submissions of the learned counsel, the following question falls for consideration : is the

period of limitation specified in Section 28 of the Sikh Gurdwaras Act applicable to the suit filed by the plaintiff against the defendants for recovery of the suit land?

Here, it will be useful to read Section 28 of the Sikh Gurdwaras Act, 1925 which is extracted hereunder:

"28. Suits for possession of undisputed property on behalf of Notified Sikh Gurdwaras -

(1) When a notification has been published under the provisions of sub-section (3) of Section 5 or of sub-section (3) of Section 10, the committee of the gurdwara concerned may bring a suit on behalf of the gurdwara for the

after the date of the publication of such notification."

Section 28 deals with suits for recovery of possession of undisputed property on behalf of the notified Sikh Gurdwaras. Under the scheme of the Sikh Gurdwaras Act a consolidated 'list of the gurdwaras and the properties thereof' was published and claims, if any, were entertained within the prescribed time. Where no claim was made under sub-section (2) of Section 5, a notification was issued under sub-section (3) of Section 5 specifying that no claim was made in respect of the right, title or interest in any property cautioned therein and such a notification is conclusive proof of the fact that no such claim was made in

respect' of any right, title or interest in the gurdwaras and the properties specified in the notification. So also is the position in respect of a notification issued under sub-section (3) of Section 10 regarding properties included in the list published under sub-section (3) of Section 7. The properties included in the said notifications are treated as undisputed properties under Section 28 of the Sikh Gurdwaras Act..

How, a plain reading of the provision extracted above shows that sub-section (i) of Section 28 enables

the committee of the gurdwara concerned to bring a suit on behalf of the gurdwara for the possession of any property, a proprietary title which has been specified in such notification subject to two conditions - (1) that the gurdwara concerned is entitled to immediate possession of the property, in question and (2) it is not in possession thereof at the date of the publication of such notification. Sub-section (2) of Section 28 has three, limbs: the first provides that such a suit shall be instituted in the principal court of original jurisdiction in which the property' in question is situated; the second prescribes a period of limitation of ninety days for bringing the suit (commencing from the date of publication of notification referred to in sub-section (1) or from the date of constitution of the committee whichever is later } and the 'thircy declares the consequence of

failure to institute such a suit within the said period of ninety days :and mandates that no subsequent suit on 'beha'ifo^ the gurdwara for possession of the property shall be instituted in any court except on the ground of dispossession of 'the gurdwara after the date of the publication (ration of such notification. For a suit of this nature no period of limitation is prescribed thereunder so "it will be governed by the Indian Limitation Act,

In the instant case, there is no dispute that the suit land is a notified property. The suit contemplated under sub-section (1) of Section 28 was brought within the period specified in sub-section (2) against the local committee of the gurdwara which was managing the suit land. That suit was decreed. In execution of the decree passed in that suit symbolic possession was obtained from Pritam Singh as he was not a party to the suit. We have perused the original record. The report of the bailiff in execution proceedings did mention that symbolic possession of the suit land was given to the decree holder. No material was placed before the Courts below by the defendants to show that Pritam Singh challenged handing over of symbolic possession or claimed any right or title in the suit land in execution proceedings and that was upheld. It was only after the said Pritam Singh denied the tenancy and the Assistant Collector 1st grade held that he was neither the mortgagagee nor the tenant, the plaintiff brought the present suit against the defendants for recovery of possession of the suit land. This suit is of the nature referred to in the third limb of sub-section (2) of Section 28, referred to above. On the premise that it was only after the publication of the notification that the cause of action arose to the plaintiff, it filed the suit for recovery of the suit-land. The first Appellate Court as

well as the High Court held that the defendants did not perfect their title by adverse possession and this finding remained unchallenged.

From the above discussion, it follows that the period of "limitation of ninety days mentioned in Section 28 is not applicable to the present suit, so it cannot, therefore, be said to be barred by limitation specified therein. The suit falls within the third limb of sub-Section (2) of Section 28 to which period of limitation specified in the Indian Limitation Act applies. The first Appellate Court and the High Court have held that the suit is not barred under Limitation Act. The High Court has, therefore, rightly decreed the suit of the plaintiff. We find no illegality in the judgment and decree under appeal. The appeal falls and it is accordingly dismissed but in the circumstances of the case without, costs.