
(2003) 05 MP CK 0056

In the Madhya Pradesh High Court

Case No : Second Appeal No. 237 of 2001

Badrilal Patidar and Another

APPELLANT

Vs

Kanhaiyalal and Others

RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 110

Citation : (2003) 3 MPHT 349

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : B.K. Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—The only issue urged in support of this second appeal filed u/s 100 of CPC by the defendant against the judgment/decreed, dated 31-1-2001, passed by learned IInd Additional District Judge, Neemuch in C.A. No. 12-A of 1998, which in turn arises out of Civil Suit No. 45-A of 1982, decided on 28-1-1998, by Civil Judge, Class II, Neemuch, was that the First Appellate Court was not justified in deciding the issue of limitation in favour of plaintiff. In other words, the submission of learned Counsel for the appellant (defendant) while impugning the judgment/decreed of First Appellate Court was that the suit filed by the plaintiff claiming 1/3rd share in the suit properties and for effecting partition and separate possession should have been held to be barred, because of the same not having been filed within three years from the date of accrual of cause of action. It is this submission which was repelled by the First Appellate Court by holding the suit to be maintainable and within limitation.

2. Heard Shri B.K. Joshi, learned Counsel for the appellants on the question of admission.

3. In my view, no interference in the impugned judgment inter alia holding the

suit to be in time, can be made. It is not in dispute that parties to the suit are closely related to each other being the members of one family. The plaintiff claimed his 1/3rd share in the suit property as against the defendant who claimed that the partition has already taken place inter se members of partition. The plea was not accepted on facts and the First Appellate Court returned a finding of fact that there has been no partition inter se members of family as alleged. It was also held that when there has been no partition inter se members of joint family, any member has a right to demand the partition and then file a suit which is governed by Article 110 of Limitation Act and not Article 58 as alleged by the defendant.

4. In my view, the approach of the First Appellate Court appears to be legal and proper when he proceeded to hold that suit is within time. So far as facts of the case are concerned, as held supra, it is found as a fact that a plea of earlier partition having taken place did not find favour to the Court below. It is a finding of fact and in any event, no challenge much less serious one was laid by the defendant (appellant herein) to this finding in this second appeal. I, thus, concur with this finding and uphold it.

5. Once, this conclusion is reached that no partition has taken place, the only consequence that emerge in the facts of this case is that parties remain joint in relation to suit properties each having a share in it depending upon the number of members in the family. No attempt was made by the defendant (appellant) to contend that plaintiff does not have 1/3rd share in the suit properties in case, if partition is effected. In other words, the plaintiffs share in the suit properties was held to be 1/3rd and the same was recognised by granting him a decree in respect of his 1/3rd share. No flaw thus, can be found in the impugned judgment/decree.

6. Appeal, thus, is found to have no merit. It has no substance. It does not involve any substantial question of law within the meaning of Section 100 *ibid* and what is urged do not exhibit any error of law. It was only a technical legal plea which on facts was not made out in defendant's favour

7. The appeal is accordingly, dismissed in limine.