

(1976) 07 MP CK 0006

In the Madhya Pradesh High Court

Case No : First Appeal No. 14 of 1972

Chhotelal Babulal and Another

APPELLANT

Vs

Premlal Girdharilal and Others

RESPONDENT

Date of Decision : 01-07-1976

Acts Referred:

Limitation Act, 1963 — Article 110, 64, 65

Citation : AIR 1977 MP 34 : (1978) ILR (MP) 954 : (1976) JLJ 610

Hon'ble Judges : J.P. Bajpai, J;C.M. Lodha, J

Bench : Division Bench

Advocate : P.C. Naik, for the Appellant; K.N. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Lodha, J.—The plaintiffs Chhotelal and Bhuresingh (brothers) have preferred this appeal from the judgment and decree by the Fourth Additional District Judge, Jabalpur, dated 16th February 1970 whereby the plaintiffs' suit for partition and possession of the house in question bearing No. 1130/2, Gorakhpur, Jabalpur, was dismissed.

2. The following pedigree of the parties may be helpful in understanding the facts of the case:

BUDHRAM _____ | _____ |
Girdharilal Babulal _____ | | | Premlal Chhotelal
Bhuresingh (Deft. 1) (Pltff. 1) (Pltff. 2)

3. The plaintiffs' case is that Babulal and Girdharilal jointly acquired the house in question out of the sale proceeds of an ancestral house. Babulal, it is admitted, started living separately from Girdharilal sometime after the year 1932. It is further not in dispute now that plaintiff No. 1 Chhotelal left the house in question sometime in 1943-44. It is alleged that in 1950 Girdharilal sold a portion of the house in question, marked by letters Q.R.S.T. in the map annexed to the plaint, to defendant No. 3 Gorelal who in his turn raised construction on it. Again, on

11-12-1961, Premlal (defendant No. 1) sold another portion of the suit house along with land marked A B C D on the map to Smt. Vidyawati, defendant No. 2, who is admittedly in possession of that portion. Two more persons were impleaded as defendants in the case on the ground that one of them is a tenant in a portion of the house and pays rent to defendant Premlal and an agreement to sell another portion of the house has been entered into with the other.

4. The suit was resisted by all the defendants except defendant No. 5 who was proceeded against ex parte. They pleaded that the suit property had been partitioned as far back as in the year 1933 when the parties had separated and the house in question had fallen exclusively to the share of defendant No. 1 Premlal. In the alternative, it was pleaded that the defendants had perfected their title to the suit property by adverse possession. Defendants Nos. 2 and 4 further pleaded that they had invested large sums of money in the property in question as bona fide purchasers for value and in case the plaintiffs' suit is decreed, they should be held entitled to get that amount. The learned trial Court framed a number of issues on the various contentions raised by the parties. After scrutinizing the evidence produced by them, it came to the conclusion that the partition of the suit property in the year 1933 was not proved. All other points except the question of ouster and adverse possession were also decided in favour of the plaintiffs; but, as regards the question of adverse possession and ouster, the learned trial Court found that there was ouster of the plaintiffs from the suit property in the year 1943-44 and since then Girdharilal and Premlal had been in exclusive possession of the property. In support of its conclusion, it referred to a number of circumstances to which we shall presently refer.

5. We have heard learned counsel for the appellants and have also perused the relevant record. Shri P.C. Naik, learned counsel for the appellants, has very frankly conceded before us that no just exception can be taken to the finding of the trial Court that the plaintiffs had been out of possession of the suit property since the year 1943-44. However, he has strenuously urged that limitation for filing the suit commenced only in 1954 when the plaintiffs made a demand for partition of the property and the same was refused by the defendants. It has been argued that the defendants had not perfected their title to the property in question by adverse possession. In support of this contention, he has relied upon *Radhoba v. Aburao* AIR 1929 AC 231.

6. It is beyond controversy that the plaintiffs were living in the same town in which the property in question is situated. There is also no gainsaying the fact that Girdharilal, father of defendant No. 1 Premlal, sold away a portion of the property to Gorelal, defendant No. 3, in the year 1950 and the latter raised construction on it in the year 1963. It is apparent from the statement of plaintiff Chhotelal (P.W. 1) that after having given up his control and possession over the house in question in the year 1943-44, no attempt was ever made by the plaintiffs to assert their right and title to the suit property but for the oral demand for partition alleged to have been made in the year 1954. He says that

he came to know of the sale to Gorelal in or about the year 1965. He has further stated that he had seen construction being raised on the open portion of the land sold to Gorelal sometime in the year 1953-54 and even then he did not raise any objection.

He further admits that he never cared to find out as to how much sale price Girdharilal had received from Gorelal. He also admits that he did not give any written notice to Gorelal about the sale. It is thus clear that by his act and conduct, he acquiesced in the sale and led the purchaser to believe that Girdharilal had rightfully sold a part of the property to him. Not only that, it is admitted by him that he never got any share of rent of the property since 1943 nor did he care to recover his share of the rent from Girdharilal. It is his own case that Girdharilal used to keep tenants in the house in question and after his death tenants were inducted into the house by his son Premlal. Chhotelal has further stated that the house in question is entered in Girdharilal's name only in the municipal records since the year 1934 and he never applied for his name being also included in the entry as a co-owner. From these circumstances, the trial Court, in our opinion, rightly inferred that defendants 1 and 2 had started exercising a title hostile to that of the plaintiffs since the year 1943-44 when the plaintiffs admittedly went out of control and possession over the house in question and the plaintiffs raised no objection.

7. However, learned counsel for the appellants has laid great stress on the fact that limitation would start running, against his clients only from the date when they made a demand for partition. In the first place, we wish to point out that there is no convincing evidence regarding this demand. Admittedly, no written notice was served to assert this demand and, in the circumstances of the case, we are not prepared to place any reliance on the alleged oral demand. Our conclusion in this respect is further fortified by the contents of notice Ex. P-1, dated 23rd June 1965, served on behalf of the plaintiffs on the defendant Premlal. There is not a word in this notice that the plaintiffs had made a demand for partition in the year 1954. There is also nothing in this notice to show that the plaintiffs had raised objection or protested in any manner regarding the hostile acts of title and exclusive possession exercised by the defendants against them. We are, therefore, satisfied that there was complete exclusion of the plaintiffs from the suit property since the year 1943-44 onwards. But apart from that, there is no warrant for the proposition that limitation for a suit for partition in a suit like the present would commence from the date of demand. The Privy Council authority relied upon by the learned counsel referred to above is distinguishable on facts and the principle laid down therein has no application to the facts and circumstances of the present case. We may point out that, in the first instance, what amounts to exclusion in a particular case would depend on the particular facts and circumstances of each case. An intention to exclude is no doubt an essential element and it is necessary for the Court to be satisfied in each case that there was an intention on the part of those in control and possession of the joint family property to exclude the person and that exclusion

was to his knowledge. In the Privy Council case referred to above, N., a member of a joint Hindu family after the death of his father and mother went to live with his maternal uncle voluntarily. He was not turned out. But he went with the consent of the eldest male member in the joint family. He was helped by his maternal uncle and was living in an humble way. He was not educated in the same way as the other members of the joint family, but he was not dissatisfied with the conditions under which he was living. In these circumstances, their Lordships were pleased to hold that the mere fact that during the time he was living with his maternal uncle and the members of the joint family did not subscribe towards his maintenance and marriage expenses did not prove that those in control and possession of the joint family property intended to exclude him from his share of the joint family property. It was further held that the members of the joint Hindu family never intended to exclude him from his share in the family property. The circumstances of the present case, as we have narrated above, are quite different. The irresistible conclusion as it flows from the acts, omissions and conduct of the plaintiffs, as borne out from the evidence of Chhotelal himself, is that the defendants intended to completely exclude the plaintiffs from the control and possession of the house in question a fact of which the plaintiffs had full knowledge. In this view of the matter, the suit instituted by the plaintiffs" on 4-5-1966 was clearly time-barred. We are also unable to interfere with the findings of the Court below that there was ouster of the plaintiffs from the suit property and the defendants had perfected then title to the same by adverse possession.

8. This appeal, therefore, fails and is hereby dismissed, but, in the circumstances of the case, we leave the parties to bear their own costs.