

(1936) 08 PAT CK 0009
In the Patna High Court

Damar Mahton

APPELLANT

Vs

Jagdi Mahton and Others

RESPONDENT

Date of Decision : 05-08-1936

Acts Referred:

Limitation Act, 1963 — Article 120, 125

Citation : AIR 1936 Patna 535

Hon'ble Judges : Courtney-Terrell, C.J.;Dhavle, J

Bench : Full Bench

Judgement

Dhavle, J.—This appeal arises out of a suit for a declaration of reversionary rights. Makhu Mahton, paternal uncle of the plaintiff and defendant 3, died on 7th March 1917, leaving him surviving as his heirs two daughters Lachmi Kuer, defendant 2, and Barti Kuer who died sometime after. Makhu had a four annas five dams share in two tawzis, and out of this he conveyed certain portions to defendant 1, the then minor son of a daughter of a predeceased son of his, by a deed of gift dated 6th March 1917. There were disputes in the Land Registration proceedings that followed upon Makhu's death, and on 10th July 1917, the Deputy Collector passed orders registering the name of defendant 1 in respect of the entire share of Makhu in the two tawzis. The case of the plaintiff, who is appellant before us, was that the order of the Deputy Collector was obtained by defendant 1 in collusion and concert with defendant 2, and he sought a declaration that the entry is inoperative against the rights of himself and defendant 3 as reversioners of Makhu in respect of the portions not covered by the deed of gift. The suit was contested by defendant 1 on the grounds, principally, that it was barred by limitation and that Makhu's gift to this defendant extended to the whole of his share in the two tawzis. The trial Court upheld both these contentions and dismissed the suit. On appeal the District Judge held that the deed of gift covered only certain portions of the share but that the trial Court was right in finding that the suit was governed not by Article 125 but by Article 120, Lim. Act, and was thus barred by time.

2. It has been contended for the appellant that the suit should have been treated as one governed by Article 125, Lim. Act, so that, having been instituted in January 1928, it would be within time. The article however only applies to suits during the life of a Hindu female to have an alienation of land (which she takes as a widow) made by her declared to be void except for her life. The learned advocate has relied on such cases in *Ram Sarup s Ham Dei* (1907) 29 All 239 and *Kanshi Ram v. Mt. Chet Kaur* 1928 Lah 932, in which it was held that for the purposes of this Article of the Limitation Act a formal deed of transfer by the Hindu widow is not necessary, but that any act done by her which necessarily results in an alienation is sufficient. That position may be conceded, but on the findings of fact it does not help the appellant to establish that the suit comes within Article 125. The appellant did undoubtedly assert collusion between the widow and defendant 1 in the matter of the Land Registration proceedings; but it has been found that she filed a petition of objection to the claim of defendant 1 on that occasion and actually contested it. Mr. De has suggested that collusion may be inferred from the fact that after the decision of the Deputy Collector the widow, defendant 2, did not bring a suit to establish her right to the disputed portions of the property, and he has argued that the reversioner has a right to obtain a declaration in order to prevent adverse possession against the widow giving the trespasser a valid title by the expiry of 12 years. But whether the widow was or was not under an obligation vis-a-vis the reversioners to get rid of the adverse possession of defendant 1, Article 125 will not affect the appellant unless there was something amounting to an alienation by her. Defendant 1 obtained the Land Registration entry in spite of a contest offered both by her and by the appellant, and from the mere failure to bring a title suit afterwards, very little more collusion can be inferred against her than against the appellant himself.

3. Mr. De has also suggested that the widow's inaction may be treated as a case of surrender. But a surrender is a voluntary act and is clearly distinguishable from a failure to bring a title suit which has not been shown by the appellant to be due to any arrangement or understanding with defendant 1. *Ranga Row v. Ranganayaki Ammal* 1919 Mad 706 is a good illustration of the principle applicable in interpreting alienation for the purposes of Article 125. That was a suit to have a sale in execution of a mortgage decree declared inoperative against the reversioners because the Hindu widow had withdrawn her defence to the action on a mortgage which was executed by her husband, and the learned Judges held that the withdrawal of the defence would not amount to an alienation by the widow unless it was shown to have been intended by the widow to bring the sale about and actually did so--unless, in other words, there was collusion between her and the person suing on the mortgage. In my opinion the lower Courts were right in holding that Article 125 had no application to the suit; and there is no question that failing Article 125, the suit would be within Article 120 with its limitation of six years from the time when the right to sue accrues. Aggrieved as the appellant is by the Land Registration entries, the right to sue

accrued as long ago as 10th July 1917, so that the suit was clearly barred by time.

4. Mr. De has also asked for leave to amend the plaint on the ground that Lachmi Kuer died during the pendency of the appeal, giving the plaintiff (along with defendant 3) a present right to possession. That however would be a substantial alteration of the cause of action: see *Govinda v. Perum Devi* (1889) 12 Mad 136, and there is the less reason to permit an amendment of that character because the suit was brought long after the expiry of the period of limitation. I would accordingly dismiss this appeal with costs.

Courtney-Terrell, C.J.

5. I agree.