
(1973) 06 OHC CK 0006
In the Orissa High Court
Case No : A.H.O. No. 4 of 1971

Khetra Praja Ratna and Others

APPELLANT

Vs

Ippilli Rajendra Rao and Others

RESPONDENT

Date of Decision : 22-06-1973

Acts Referred:

Limitation Act, 1908 — Article 144

Citation : AIR 1974 Ori 48

Hon'ble Judges : G.K. Misra, C.J.; S.K. Ray, J

Bench : Division Bench

Advocate : B.B. Sahoo and A.K. Tripathy, for the Appellant; S.C. Roy, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—The plaintiff and the late Ippilli Rangava (hereinafter to be referred to as "Rangava"), were undivided brothers forming a Hindu Joint family. Rangava was the Karta. Defendant-1 borrowed some money from late Rangava, Plaintiff filed O. S. No. 6/42 in the Court of the Subordinate Judge, Berhampur, and obtained a money-decree. In execution of that decree he purchased the undivided one-fourth interest. by two sale-certificates, ext. 1 dated 20th February. 1951, and ext 2 dated 10th May, 1951, of the coparcenary properties belonging to defendant-1 and other coparceners who have been impleaded as defendants in this case. He took symbolical delivery of possession of the undivided interest purchased by him. The delivery receipts are exts. 3 and 4 dated 10-10-1951. He filed suit for partition on 10-10-1963. Though a large many defences were taken in the written statement, at the final hearing defendants contested the partition suit only on the ground of limitation. Their case is that the suit is barred by limitation under Article 144 of the old Limitation Act, and that the Limitation is to run from the date of confirmation of the sale when the plaintiff acquired title to the one-fourth undivided interest of defendant-1 in the coparcenary property.

2. The learned Subordinate Judge dismissed the suit upholding the defence contention. He relied upon Smt. Poodipeddi Laxminarasamma Vs. Gada Ranganayakamma and Others, in support of his conclusion.

3. In First appeal, our learned brother R. N. Misra. J held that limitation ran from the date of symbolical delivery of possession, and not from the date of confirmation of the sale. The symbolical delivery of possession having taken place on 10-10-1951, and the suit having been filed on 10-10-1963, the suit was held to be within limitation. He accordingly allowed the appeal and decreed the plaintiff's suit.

It is against his judgment that this A. H. O. has been filed.

4. The sole question for determination is whether this suit for partition is barred by limitation.

We agree with the learned Single Judge that Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others, concludes the position of law that if at all Article 144 applies, then limitation would run not from the date of the confirmation of the sale, but from the date of symbolical delivery of possession.

5. The propositions of law laid down in the aforesaid Supreme Court decision may be culled together. They are-

(i) The purchaser of a coparcener's undivided interest in a joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition may be found to fall to the share of the coparcener whose share he has Purchased. His right to possession would date from the period when a specific allotment is made in his favour.

(ii) The other coparceners whose undivided interest has not been purchased can never be in adverse possession of the property purchased by the decree-holder. as possession could be adverse only when he was entitled to possession.

(iii) The aforesaid principles have, however, no application to an undivided share in a Property which is not coparcenary property.

(iv) by delivery of symbolical possession, adverse possession, if any of the other coparceners is interrupted. Time is to run from the date of delivery of symbolical possession, and not from the date of confirmation of the sale.

(v) Though the purchaser of an undivided share in a coparcenary property Is not entitled to any possession until a suit for Partition is worked out yet the order of delivery of symbolical possession Is not a nullity. Such an order is not one without jurisdiction. It is a case where the Judge effecting delivery of possession makes an order, wrong in law while acting within his jurisdiction. Whether the delivery of symbolical possession is legal or not in fact there is interruption of adverse possession. The question whether interruption was justifiable in law is

irrelevant.

6. Applying the aforesaid tests to the facts of the present case, it is clear that the suit is to be decreed. Firstly, according to the majority judgment the plaintiff is not entitled to Possession of the undivided interest of the first defendant in the coparcenary property until the suit for partition is decreed, and he gets a specific property on partition. On such a view Article 144 has no application as the decree for partition is to be passed only by the judgment in this case and it is to be subsequently worked out when the plaintiff would set thp specific property in which he would have right to possession.

Alternatively, even if Article 144 applies limitation would run from the date of symbolical delivery of possession and the suit has been filed within 12 years thereof.

7. In Smt. Puddipeddi Laxminarasamma Vs. Gadi Ranganayakemma and Others, . Berham J. held that limitation would run from the date of confirmation of sale and not from the date of Symbolical delivery of possession. This judgment was confirmed in a Letters Patent Appeal by Narasimham C. J. and R. K. Das, J. in Smt. Poodipeddi Laxminarasamma Vs. Gada Ranganayakamma and Others, .

The view taken in those decisions is directly contrary to the aforesaid pronouncement of the Supreme Court

R.N. Misra, J. was perfectly justified In savins that the aforesaid two Orissa decisions can no longer be held as laying down good law.

8. On the aforesaid analysis, the appeal has no merit and is accordingly dismissed aS the appeal was filed despite the Supreme Court decision having been fully discussed by the learned single Judge it is dismissed with costs.

S.K. Bay, J.

9. I agree.