

(1951) 09 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Second Appeal No. 13 of 1951

Palas Ram

APPELLANT

Vs

Devi Das and Others

RESPONDENT

Date of Decision : 21-09-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 20, Order 41 Rule 33
Limitation Act, 1908 — Section 12(2)
Punjab High Court Rules and Orders — Rule 1A

Citation : AIR 1952 HP 9

Hon'ble Judges : Chowdhry, J.C.

Bench : Single Bench

Advocate : K.R. Khosla, for the Appellant; Thakur Das, for the Respondent

Final Decision : Dismissed

Judgement

Chowdhry, J.C.

1. Devi Das, a sonless proprietor, executed a registered sale-deed in respect of some agricultural land in favour of Hari Das for the ostensible consideration of Rs. 4,000/-. On the allegations that the land was ancestral, that he was a reversionary heir of the vendor, that under custom a sonless proprietor is not entitled to alienate his property without the consent of the reversioner, and that the sale was made otherwise than for valuable consideration or legal "necessity, the plaintiff sued the vendor and the vendee for a declaration that the sale would not affect his reversionary rights after the death of the vendor. In the alternative, he also prayed for recovery of possession of the property by pre-emption. The plaintiff also impleaded as a pro forma defendant one Joban Das as another reversioner.

2. The suit was dismissed by the Senior Subordinate Judge of Kasumpti on 28-8-1950, and the plaintiff's appeal was dismissed by the District Judge of Mahasu of Sirmur on 7-3-1951. He has now come up in second appeal to this Court.

3. The preliminary objection that no second appeal lay has no force. The lower appellate Court having affirmed the decision of the trial Court, and the property which was the subject-matter of the decree of the lower appellate Court being in any case worth more than Rs. 1,000/-, this is a competent second appeal under para. 32 (1) (b) (ii), Himachal Pradesh (Courts), Order, 1948.

4. Another preliminary objection taken was that this appeal is time-barred, and this objection must be upheld. As stated above, the decree of the District Judge, against which the present appeal has been filed, was passed on 7-3-1951. An application for copies of the judgment and decree of the lower appellate Court was made by the appellant on 23-5-1951, and the copies were delivered to him on 25-5-1951. The appellant also applied for a copy of the judgment of the trial Court on 23-5-1951 and obtained the copy on 26-5-1951. If the three days taken by the appellant in obtaining copies of the judgment and decree of the lower appellate Court be the only time requisite for obtaining necessary copies within the intendment of Sub-section (2) and (3) of Section 12, Limitation Act, then the ninety days for filing the appeal and the three days for obtaining the said copies expired on 8-6-1951, so that the present appeal, which was filed on 9-6-1951, was time-barred by one day.

5. One other argument propounded by the learned counsel for the defendants-respondents Devi Das and Hari Das in support of the contention that this appeal is time-barred was that originally the appeal was filed only against Devi Das and the name of the other defendant Hari Das was added by the appellant to the memorandum of appeal only on 29-6-1951. Now, there is no doubt that under Order 41, Rule 20, Civil P C., an appellate Court is entitled to add as a respondent any party not so impleaded but interested in the result of the appeal. This power would not however be exercised if the period of limitation as against the party sought to be so added has already expired, for, by reason of the appeal having thus become time-barred against him, such a party cannot be said to be interested in the result of the appeal. AIR 1927 252 (Privy Council) In this case neither an application was made by the appellant under the said provision of the Code, nor did this Court ever pass any order suo motu under that provision. The office pointed out the defect in the memorandum of appeal, and thereafter the learned counsel for the appellant added the names of the remaining two defendants-respondents to the memorandum of appeal on 29-6-1951. Incidentally, this practice of returning a document on record to a party or his counsel for correction must be stopped forthwith. The defect should be pointed out to the party concerned or his counsel, and he should be required to make proper application in that connection. It has however to be seen whether it is a fact that the other two defendants-respondents besides Devi Das had not been made parties to this appeal. Strictly speaking, this inquiry must be confined to only the defendant-respondent Hari Das, the vendee, and not extended to the pro forma defendant Joban Das, for it was only the former who was a necessary defendant-respondent for the purposes of this appeal. I say that the vendee Hari Das was a necessary party to this appeal because, the property being admittedly

in his possession, any decree that might be passed as a result of this appeal against the vendor Devi Das alone would be infructuous. A reference to the memorandum of appeal, as originally filed, shows that after Devi Das the word etc. was added by the appellant. That means that the appeal was not directed against the defendant-respondent Devi Das alone, but also against the remaining respondents. True, the other two respondents were not specifically named in the memorandum of appeal, but the copy of the decree of the lower appellate Court filed by the appellant along with the memorandum did contain names of all the respondents. It cannot therefore be said that the other two respondents besides Devi Das had not been made parties at the time of the institution of the present appeal. I hold therefore that the appeal was not time-barred on the ground that Hari Das had not been impleaded before the expiry of limitation.

6. The preliminary objection as to limitation must however be allowed on the first ground of the appeal having been filed one day too late, even after allowing u/s 12, Limitation Act, the requisite time for obtaining copies. It was argued by the learned counsel for the appellant that he is in fact entitled to four days under the said section of the Limitation Act because he should also be given the benefit of the time taken by him in obtaining the copy of the judgment of the trial Court. There is no doubt that under Rule 1-A, Chapter 1, Volume V, Rules and Orders of the Punjab High Court, adopted by this Court under notification J-C-1-R-o/1950, dated 28-6-1950, it is incumbent on an appellant in a second appeal to this Court to file not only copies of the decree and judgment appealed from but also a copy of the judgment of the Court of first instance, but there is ample authority for the view, including the view of the Punjab High Court, that no such rule can modify any rule or mode of computation of limitation prescribed by the Limitation Act. "Narsingh Sahai v. Sheo Prasad 40 All 1; "Chunilal v. Dahyabhai 32 Bom 14; "Chuhar Mal v. Bira Ram AIR 1923 Lah 461; and "Babu Singh v. Mangat Rai AIR 1927 Lah 192. The appellant is therefore not entitled to the benefit of time taken by him in obtaining copy of the judgment of the trial Court.

7. The learned counsel for the appellant put forward another argument to tide over the said period of one day by which the appeal is time-barred. He contended that the appellant is entitled under Sub-section (2) of Section 12 of the Limitation Act to the exclusion of the day on which the judgment of the lower appellate Court was pronounced. (It may be stated here that that day has already been excluded from computation of limitation). He further contended that the appellant is also entitled to exclusion of one more day under Sub-section (1) of the said section. Under this latter sub-section, in computing the period of limitation prescribed for any appeal, the day from which such period is to be reckoned shall be excluded. According to the learned counsel for the appellant the day from which the period of limitation is to be reckoned for the purposes of the present appeal is 8-3-1951, the date following that on which the judgment of the lower appellate Court was pronounced. The reasoning behind this contention was that the day on which the judgment was pronounced having already been

excluded under Sub-section (2), the day from which the period of limitation was to be reckoned under Sub-section (1) could only be the day following that on which the judgment was pronounced. Thus, he sought exclusion of both 7-3-1951 and 8-3-1951 for computation of period, of limitation for the present appeal. No authority in support of this contention was cited by the learned counsel, and I do not think that the contention is sustainable. Sub-section (2) contains a specific provision for exclusion of the day on which the judgment complained of was pronounced and of the time requisite for obtaining a copy of the decree etc. appealed from, while Sub-section (1) provides for exclusion of the day from which the period of limitation is to be reckoned. The question is: What is the correct interpretation of the words "the day from which such period is to be reckoned" in Sub-section (1)? so far as a suit is concerned, those words obviously apply to the day on which cause of action for the suit arose. For instance, in the case of an acknowledgment u/s 19 of the Limitation Act, there is a fresh cause of action from the date of acknowledgment, and the day on which the acknowledgment was made has therefore to be excluded u/s 12 (1) of the Limitation Act. "Jainarayan Babu v. Vithoba AIR 1923 Nag 143. Likewise, it was held in "Ganapathi v. Sitha-rarna 10 Mad 292, that where certain emoluments fell due on a certain date the period of limitation began to run from that date and therefore that date must be excluded from computation. Now, so far as an appeal is concerned, cause of action" for its institution only arises on the day when the judgment complained of is pronounced. That being so, that is the day from which the period of limitation for the appeal is to be reckoned, and therefore to be excluded, within the purview of Sub-section (1) of Section 12. There is no doubt that this day has also to be excluded under the provisions of Sub-section (2) of this section, but that is only because in the case of an appeal the day on which the judgment complained of is pronounced is also the day from which the period of limitation is to be reckoned. I therefore hold that under both the sub-sections the appellant is entitled to the exclusion of only one day, that is, 7-3-1951, when the judgment of the lower appellate Court was pronounced. The appeal is therefore clearly time-barred by one day. I may mention in this connection that there is no application on behalf of the appellant for condonation of this delay u/s 5 of the Indian Limitation Act.

8. The preliminary objection of the defendants-respondents Devi Das and Hari Das as to this appeal being time-barred is allowed, and the appeal is dismissed with costs and the judgment and decree of the lower appellate Court are affirmed.