

(1987) 01 AHC CK 0059

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1104 of 1973

Parwan

APPELLANT

Vs

The U.P. Board of Revenue and Others

RESPONDENT

Date of Decision : 20-01-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 6, 7, 8

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B, 341

Citation : (1987) 1 AWC 623 : (1987) RD 139

Hon'ble Judges : K.J. Shetty, C.J; D.N. Jha, J

Bench : Division Bench

Advocate : R.K. Dwivedi, for the Appellant; G.N. Verma, S.P. Kukshrestha and K.B. Garg and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

K.J. Shetty, C.J.—This writ petition has come up before us for disposal upon a reference made by Mr. Justice R.M. Sahai.

2. The question raised in this case is of considerable importance. It relates to the applicability of Section 8 of the Limitation Act 1963 for a suit instituted u/s 229-B read with Section 209 of the UP ZA and LR Act No. 1 of 1951 (Act for short).

3. Before considering the question, it will be necessary to refer to the relevant facts. Parwan, the Petitioner was a minor when his father died. He was then hardly one year old. Thereafter his mother remarried Jagan Respondent No. 5. After some time mother also died. By then the Petitioner was hardly five years old. After death of his mother his uncle became his guardian. The suit properties came under the supervision of his uncle. It is said that his uncle by colluding with Jagan got the properties recorded in the name of Teja Respondent No. 4.

4. On January 3, 1962 the Petitioner attained majority. On November 20, 1966

he filed the suit out of which this writ petition arises. In the suit he has complained that his guardian had committed a fraud by depriving his legitimate rights in respect of his properties and he should be declared as sole tenant thereof. The suit was filed u/s 209 read with Section 229-B of the Act. One of the issues in the suit was as to the maintainability of the suit. The bar of limitation was pleaded to non-suit the Plaintiff. The court of first instance however, decreed the suit. It held that the suit was within the period of limitation. The First Appeal filed by the Respondent No. 4 was dismissed but the Second Appeal filed by him was allowed by the Board of Revenue. It held that the suit was barred by time since it was filed beyond three years after the Petitioner attained majority.

5. The Petitioner has now moved this Court under Article 226 of the Constitution challenging the decision of the Board of Revenue. Before the learned Single Judge it was urged that the view taken by the Board of Revenue is quite contrary to the Full Bench decision of this Court in *Shitla Prasad v. Bans Bahaore* 1974 ALJ 181 and also the decision in *Onkar Nath Dubey Vs. Dy. Director of Consolidation and Others*, . There were also other decisions cited before the learned Single Judge to sustain the suit. It was urged that the Petitioner has got a right to institute the suit within six years after he attained majority. The learned Judge found it difficult to agree with the contention. So he has referred the case for disposal by a Division Bench.

6. Before us, the same contention has been pressed for acceptance relying upon the decision of the Full Bench in *Shitla Prasad* case. The question and the only question that arose for consideration in that case was whether Section 6 of the Limitation Act is applicable to a suit filed u/s 209 of the Act. That question was answered in the affirmative in the following terms:

Therefore, our answer to the question referred to us is that u/s 341 of the U.P. Zamindari Abolition and Land Reforms Act Section 6 of the Limitation Act, 1908 would be applicable to a suit u/s 209 even in the absence of any express provision in Section 341 making Section 6 applicable.

7. There is thus no doubt about the applicability of Section 6 of the Limitation Act to a suit u/s 209 of the Act. The question however, is whether Section 8 of the Limitation Act also governs such a suit. Mr. Dwivedi, Learned Counsel for the Petitioner primarily rested his contention on the decision in *Shitla Prasad*'s case. He urged that the Petitioner has a right to file the suit within six years after he attained majority. A period of six years no doubt has been prescribed for a suit u/s 209 of the Act. It has been so prescribed under item No. 30 in Appendix III of the Rules framed under the Act.

8. The decision of the learned Single Judge in *Onkar Nath Dubey* case (*Supra*) and the decision in *Ram Kishore v. Deputy Director of Consolidation* 1983 RD (Hindi decision) support the contention urged by Mr. Dwivedi. But with respect, we are unable to subscribe to the view taken in these decisions. The decision of the Full Bench in *Shitla Prasad* case appears to have been misconstrued in the

said two cases. The Full Bench has not dealt with the applicability of Section 8 of the Limitation Act. Indeed the Full Bench was not called upon to decide that question. As earlier stated the only question that was required to be determined by the Full Bench was about the applicability of Section 6 of the Limitation Act.

9. If Section 6 of the Limitation Act is applicable to a suit u/s 209 of the Act whether we could exclude Section 8 of the Limitation Act is the question before us.

10. The combined effect of Sections 6 and 8 of the Limitation Act is that it extends the period of limitation only by three years. Section 8 is in the nature of exception to Section 6 and 7. Section 6 provides for legal disability of persons entitled to institute a suit or make an application. It states that a person may make an application or file a suit within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefore in the third column of the Schedule. But Section 8 imposes a restriction on the operation of Section 6. It reads thus:

Nothing in Section 6 or in Section 7 applies to suits to enforce right of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period of limitation for any suit or application.

11. Section 8 therefore, cannot be read in isolation. If Section 6 is applicable to a suit, then Section 8 is automatically dragged in. The two sections are not mutually exclusive. The suit u/s 209 of the Act cannot be instituted beyond three years after the Plaintiff attained majority. The view to the contrary taken by this Court in Onkar Nath Dubey case and in Ram Kishore case (Supra) cannot be said to have laid down the correct law. They are, therefore, overruled.

12. The suit filed by the Petitioner was barred by time since it was beyond three years after he attained majority.

13. We cannot, however, part with this case without recording the generous submission made by Sri Verma counsel for the Respondent No. 4. He said, of course, upon the suggestion from the Court that his client is prepared to deliver peaceful possession of 4 1/2 Bighas of the suit land in favour of the Petitioner, since the parties are closely related. It is indeed a very good gesture on the part of the Learned Counsel and his client. We record the said submission. Respondent No. 4 shall deliver 4 1/2 bighas to the Petitioner within three months from today and if it is not voluntarily surrendered the Petitioner will have the right to have this order executed to get possession of 4 1/2 bighas of land out of the suit properties.

14. The writ petition is accordingly disposed of. In the circumstances of the case, there will be no order as to costs.