

(1960) 07 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No. 112 of 1958

Prakash Chimanrao Yadav

APPELLANT

Vs

Bapusaheb Ganpatrao Yadav

RESPONDENT

Date of Decision : 25-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1960) 62 BOMLR 933 : (1960) NLJ 99

Hon'ble Judges : S.M. Shah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.M. Shah, J.—This appeal is filed by one Saraswatibai widow of Chimanrao Yadav as the guardian and next friend of her minor son Prakash Chimanrao Yadav against the respondents who claim to be the illegitimate sons of Ganpatrao Yadav and is directed against an order passed by the learned Joint Civil Judge, Senior Division, Poona, dismissing her application for setting aside an ex parte decree which was passed against the minor in the suit filed by the respondents. It appears that respondent No. 1 in this appeal had filed a suit being Special Civil Suit No. 124 of 1952 against the minor Prakash making respondent No. 2 a party defendant claiming that he and defendant No. 2 were the two illegitimate sons of Ganpatrao, that Ganpatrao had gifted the lands in suit in their favour by a registered deed and that, therefore, they were entitled to the possession of the suit lands from the minor Prakash. In this suit, it appears, the plaintiff had applied that one Vikram alleged to be the maternal uncle of minor Prakash be appointed as guardian of Prakash. The application was granted and a notice was accordingly ordered to be issued to Vikram by the Court. Vikram, however, was not served with the notice from September 5, 1952 upto October 27, 1953. On March 22, 1954, the plaintiff applied to the Court saying that the Nazir be appointed guardian of the minor. That application was granted by the Court. The Nazir in his turn, however, informed the Court that he was not able to get any

notices served upon Vikram Balwant. The plaintiff thereafter furnished the Nazir with the fresh address of Vikram at Baramati. In spite of it, however, the Nazir appears to have filed a Purshis in the Court on June 19, 1954, stating that he had not received any information or instruction from Vikram Balwant in regard to the subject-matter of the suit. The Court in these circumstances heard the suit and passed an ex parte decree on September 5, 1955. The matter thereafter seems to have gone to the Collector of Poona for the partitioning of the lands as per order in Special Darkhast No. 273 of 1955 taken out by the plaintiff in execution of the decree which was passed in his favour. On December 17, 1956, Shri Karnik, advocate for the plaintiff, gave a notice to Ramchandra Waman Kulkarni, one of the tenants of the minor Prakash and asked him to hand over possession of the lands bearing survey Nos. 19 and 20 of Rajegaon. Ramchandra Kulkarni then informed the mother of the minor Prakash about the proceedings on January 16, 1957, and it was upon that information that Saraswatibai, the mother of the minor, came to know that an ex parte decree had been passed. Saraswatibai, the natural guardian of the minor Prakash, within one month from the date January 16, 1957, when she came to know that a decree was passed against the minor filed an application in the Court for setting aside the ex parte decree. It was alleged in that application that Saraswatibai was the legal and natural guardian of the minor and that the minor had been living with her. It was stated that in the Special Civil Suit No. 124 of 1952 no proper guardian for the minor was appointed and that, therefore, the ex parte decree that was passed in that suit was invalid, and that, therefore, the minor was entitled to get the decree set aside. The minor also prayed that the decree be set aside u/s 151 of the Code of Civil Procedure. The plaintiff in the suit in reply to this application contended that it was not true that the decree was passed ex parte. He further contended that the application was barred by limitation. He alleged that the minor and his mother Saraswatibai were both living with Vikram at the time of the suit and that the minor himself was being brought up and maintained by Vikram. According to him, even at the date of his written statement the minor was living with Vikram Balwant. Vikram Balwant, it was alleged, was also managing the lands in dispute and that it was not true that Vikram Balwant was not the maternal uncle of the minor. He asserted that the appointment of Vikram Balwant as the guardian of the minor in the suit was proper. Lastly, he denied that Kulkarni had informed Saraswatibai of the decree on January 16, 1957.

2. In support of this application some evidence was led on behalf of the minor and evidence was also led on behalf of the plaintiff in the suit in rebuttal. On the consideration of the entire evidence, the learned trial Judge came to the conclusion that the minor was not properly represented in the Special Suit No. 124 of 1952. Nevertheless, he was of the opinion that the application for setting aside the ex parte decree was barred by time u/s 164 of the Indian Limitation Act. Accordingly, he dismissed the application with costs. It is against this order of the learned Judge that the minor through his mother has filed the present appeal in this Court.

3. It was contended by Mr. Bal, the learned advocate for the appellant-minor, that the learned Judge was in error in holding that the application was barred by time. He urged that the only statement on which the learned Judge was of the opinion that the application was barred by time was of the witness Ramchandra Kulkarni who deposed that he had asked Saraswatibai and Vikram about the partition proceedings on October 24, 1956, after the Mamlatdar had come to the lands and that this statement was taken for the purpose of imputing the knowledge of the decree with all its concomitants to Saraswatibai, the minor's mother. According to Mr. Bal, the knowledge referred to in Article 164 of the Limitation Act is not the knowledge of a decree having been passed, but it must be the knowledge of the particular suit, the subject-matter thereof, the plaintiff who had filed it and the reliefs claimed in that suit and it is only when such knowledge is acquired it can be said that the limitation would begin to run as from the date of that knowledge. Prima facie it does appear that Kulkarni having stated to Saraswatibai even in October 1956, something in connection with the partition proceedings did not really give any knowledge of the kind which is necessary for the application of Article 164 of the Limitation Act. It is true that on receiving such information the person receiving it would naturally be put on enquiry and it is quite likely that as a result of the enquiry he might come to know the full details of the proceedings in which the decree was passed. But that is not really what is contemplated by Article 164. What is contemplated by that article is a definite knowledge of the ex parte decree having been passed on a certain date, in a certain suit, in a certain Court in respect of a certain subject-matter and the reliefs which were awarded by the decree. It is only when this detailed information is acquired by a party against whom a decree has been passed ex parte that the limitation would begin to run. It is not as if either Mr. Bal's contention in this behalf or my acceptance of his argument is a voice in the wilderness. This proposition is supported by at least two authorities of our own High Court, one of them being Bapurao Sitaram v. Sadbu Bhiva I.L.R.(1922) Bom. 485 : 25 Bom. L.R. 74 and the other Tundlick v. Vasantrao (1909) 11 Bom. L.R. 1296, If any authority of any other High Court is needed, it is Stock & Share Exchange Bureau v. Kothari & Sons A.I.R.[1941] Mad. 435. All these authorities lay down and, with respect, quite rightly that the knowledge contemplated under Article 164 of the Limitation Act is not only the knowledge that an ex parte decree is passed against a certain individual, but that it contemplates knowledge of all things related to that ex parte decree. Applying this principle to the facts of this case, it is clear that in October 1956, Saraswatibai was not informed by Kulkarni as to who had filed the suit, in what Court the suit was filed, what was the subject-matter of the suit and what were the reliefs claimed therein. All that Kulkarni had done was to have mentioned to Saraswatibai the fact about the partition proceedings. That obviously was hardly the kind of knowledge contemplated by Article 164 of the Limitation Act. Even turning to the information which Saraswatibai deposed to having been received in January 1957, it did not amount to the knowledge which is necessary under Article 164 of the Limitation Act. Nevertheless, she filed the application for setting aside the ex

parte decree within one month from that date and, therefore, the application must be treated as within time.

4. In view of this finding, it is not necessary for me to point out that the appellant being a minor at the date of the suit as well as at the date of the application, the cause of action for setting aside the ex parte decree arose during his minority and obviously no limitation would begin to run against him in regard to the ex parte decree. Knowledge of the mother that an ex parte partition decree was passed against the minor would not really bind the minor himself and the learned advocate for the plaintiff-respondent was unable to point out any authority to me which stated that knowledge of a guardian could well be attributed to the minor and that, therefore, if any proceedings were to be taken on the basis of such knowledge, it must be taken within the period allowed by the Limitation Act and if not so taken, the proceedings would be barred against the minor for ever. In my opinion, the law is entirely different. It is another matter that the mother Saraswatibai filed an application to set aside the ex parte decree in this case. Even if she had not, in my view, the minor would not have been legally barred from presenting an application to set aside the ex parte decree within three years of his attaining majority. This question, however, need not be considered at length in view of my finding that the present application was not barred by limitation.

5. For the reasons stated above, the appeal is allowed, the order passed by the learned trial Judge is set aside and the suit is restored to file. The respondents to pay the costs of the appellant in both the Courts.