
(2013) 10 MP CK 0179
In the Madhya Pradesh High Court
Case No : First Appeal No. 36 of 2007

Sayyed Minhajul Hasan and 5 Others APPELLANT
Vs
Mst. Majhar Aara Begum RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : AIR 2014 MP 16

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Advocate : J.L. Mishra, for the Appellant; K.N. Fakruddin, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—In this appeal, the appellants/defendants have assailed the validity of the decree dated 23.11.2006 passed in Civil Suit No. 1A/2006, by which the claim of respondents No. 1 and 2/plaintiffs has been decreed. Facts giving rise to filing of the appeal briefly stated are that the plaintiffs filed a suit on the ground that they are daughters of Sayyed Mahbubul Hasan, who was owner of the suit lands. It was further pleaded that the plaintiffs had two brothers one of whom is citizen of Pakistan whereas another namely Sayyed Manjurul Hasan died in the year 1978. The plaintiffs' father expired sometime in the year 1973. It was further pleaded that as per the Muslim Law of inheritance, by which the parties are governed, the plaintiffs have one-fourth share each in the suit lands whereas their brother namely late Manjurul Hasan had half share, which devolved on defendants No. 1 to 6 on his death. The defendants filed the suit seeking the relief of declaration of title and partition.

2. In the written statement, the defendants inter-alia pleaded that Sayyed Anvarul Hasan i.e. brother of the plaintiffs, who is citizen of Pakistan sometime in the year 1980 came to Seoni and got his name and plaintiffs' name mutated in the revenue records. It was further pleaded that the suit filed by the plaintiffs is barred by limitation and the reliefs claimed in the suit have not been properly

valued.

3. The trial Court vide judgment and decree dated 23.11.2006 inter-alia held that the reliefs claimed in the suit have been properly valued as the claim in the suit pertains to agricultural lands. It was further held that the defendants had filed the suit seeking the relief of declaration of their exclusive title in respect of the suit land on 24.11.1997. Thereafter, the suit was filed on 13.10.2004, which is within limitation. It was also held that the name of plaintiffs and defendants No. 1 to 6 have been jointly recorded in the revenue record and the plaintiffs being daughters of Sayyed Mahbubul Hasan are entitled to one-fourth share each in the suit lands. Accordingly, the claim of the plaintiffs was decreed.

4. Learned counsel for the appellants has fairly stated that the plaintiffs being daughters of late Sayyed Mahbubul Hasan have one-fourth share each in the suit lands. However, while inviting the attention of this Court to the evidence of Habib-Ur-Rahman Siddiqui (PW/1), it was pointed that the plaintiffs had demanded share in the suit land sometime in the year 1979 and therefore, the suit is barred by limitation. It was also urged that the trial Court grossly erred in holding that the suit filed by the plaintiff is within limitation. On the other hand, learned counsel for the respondents No. 1 and 2 has also invited the attention of this Court to para-12 and 13 of the evidence of Habib-Ur-Rahman Siddiqui (PW/1) and has submitted that from perusal of the aforesaid paragraphs, it is not evident that the share of the plaintiffs was denied either by their father or their brothers, therefore, no cause of action accrued to the plaintiffs to file the suit at that point of time. It was further submitted that the limitation commenced on 24.11.1997, when the suit was filed by the defendants with regard to declaration of their exclusive title in respect of the suit lands and the trial Court has rightly held the suit to be within limitation.

5. I have considered the submissions made by learned counsel for the parties and have perused the record. The only question which arises for consideration in the instant appeal is whether the suit filed by the plaintiff was within limitation. From perusal of paras No. 12 and 13 of the evidence of Habib-Ur-Rahman Siddiqui (PW/1), it is evident that plaintiffs had demanded their share from brothers. However, the aforesaid witness had nowhere stated that the claim of the plaintiffs was denied by their brothers. From the evidence of Sayyed Mahbubul Hasan (DW-1), it is apparent that the suit lands were jointly recorded in the name of plaintiffs and defendants. The limitation for filing the suit for partition under Article 65 of the Limitation Act, 1963 is 12 years when the cause of action accrues to the plaintiff. In the instant case the cause of action for filing the suit for partition accrued to the plaintiff on 24.11.1997 when the defendants filed the suit seeking the relief of declaration of their exclusive title in respect of the suit lands. Thereafter, the plaintiffs filed the suit on 13.10.2004, which is within limitation. For the aforesaid reasons, the trial Court has rightly held that the suit filed by the plaintiffs is within limitation. In view of preceding analysis, I do not find any merit in the appeal. The same fails and is hereby dismissed with

costs.