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**(1989) 01 AHC CK 0067**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 2215 of 1977**

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|------------------------------|----|------------|
| Smt. Anand Kumari and Others | Vs | APPELLANT  |
| Radha Ballabh and Another    |    | RESPONDENT |

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**Date of Decision :** 02-01-1989

**Acts Referred:**

Limitation Act, 1963 — Article 144

**Citation :** (1989) 1 AWC 346

**Hon'ble Judges :** Amarendra Nath Varma, J

**Bench :** Single Bench

**Advocate :** H.S. Nigam, for the Appellant; R. Sahai, for the Respondent

**Final Decision :** Allowed

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## Judgement

Amarendra Nath Varma, J.—This is a Plaintiff's second appeal arising out of concurrent decrees passed by the courts below dismissing the suit filed by the Appellants for possession over a room and a kothri in the ground floor portion of a house and another kothri towards the eastern side of the first floor of that house detailed at the foot of the plaint.

2. Shortly stated, the plaint case was that the house in question along with four shops and certain other properties belonged to one Babulal. After the death of Babulal, a partition took place between the widow and her sons and in that partition the property in suit came to the share of her five sons. Two fifth share in this house belonged to her sons Satya Narain and Radha Ballabh. That share was sold in execution of a decree passed in suit No. 428 of 1951 brought by one Nanumal against Satya Narain and Radha Ballabh and the same was purchased by one Ram Prasad who sold it to the present Plaintiff No. 1 namely Smt. Anand Kumari. The auction sale at which Ram Prasad purchased the two fifth share of Radha Ballabh and Satya Narain was confirmed on 3-10-53 and on the same day a sale certificate was issued in his name. Subsequently symbolical possession was delivered to Ram Prasad through court over the entire house on 17-10-62. Ram Prasad thereafter sold the properties purchased by him on 12-8-66 in

favour of the Plaintiff No. 1. The Defendant Radha Ballabh, however, forcibly occupied the room and the kothri in question without any right or title. Hence this suit.

3. The suit was contested by Radha Ballabh. His case, inter alia, was that the suit was barred by time inasmuch as Ram Prasad had not been delivered possession over any specific portion of the house in question. More precisely, he was not delivered possession over the room and the kothris which are in this possession and inasmuch as the auction sale was confirmed on 3-10-53, the suit which was brought in 1967 was clearly barred by limitation.

4. Both the courts below have held that Ram Prasad had duly purchased the share of Radha Ballabh and Satya Narain in execution of the decree passed in suit No. 428 of 1951. It was further found that he had been delivered symbolic possession over the house in respect of two third share of Radha Ballabh and Satya Narain on 17-7-62. They have, however, dismissed the suit on two grounds. First, that in order to claim the relief of possession the Plaintiffs should have first brought a suit for partition of the house and in case the disputed property came to his share at the partition he could bring a suit for possession against Radha Ballabh. Second, that the auction sale having been confirmed on 3-10-53 and the suit having been brought in 1967 it was clearly barred by limitation. The lower appellate court has observed that the delivery of symbolic possession in favour of Ram Prasad on 17-7-62 was of no legal avail to the Plaintiffs inasmuch as it did not have the effect of suspending the period of limitation which had already begun to run with the confirmation of the auction sale held on 3-10-53.

5. For the Appellant it is contended that the view taken by the lower appellate court that the suit is barred by limitation is manifestly unsustainable in law. The delivery of symbolical possession in favour of Ram Prasad on 17-7-62 had the effect of interrupting the period of limitation which had begun to run against him with the confirmation of the auction sale and the view expressed to the contrary by the courts below is incorrect. The other contention raised by the learned Counsel is that inasmuch as all the co-sharers had joined in bringing the present suit the Plaintiffs had become entitled to a decree for possession and the courts below are not right in taking the view that in order to claim that relief, the Plaintiff No. 1 had first to get her share separated by means of a suit for partition and only thereafter could he bring a suit for possession provided the disputed property in respect of which possession is claimed falls to his share.

6. Having heard learned Counsel for the parties, I am clearly of the opinion that both these contentions are well founded and must be accepted. On the undisputed fact that symbolical possession was delivered to Ram Prasad over the two fifth share purchased by him at the auction sale, the conclusion is inescapable that the suit which was brought in 1967 was within time. It is elementary that a co-sharer is deemed in law to be in possession over every bit of the undivided property. That being so, when Ram Prasad purchased two fifth

share of the property and was delivered possession thereof through court on 17-7-62 it had the effect of putting him in symbolical possession over the entire house including the disputed property for which the relief for possession is sought in the present suit against Radha Ballabh. That symbolical possession has the effect of interrupting the adverse character of possession is now far too well settled to require any elaboration. In fact, the decision cited on behalf of the Plaintiffs before the lower appellate court, namely, Mamidi Venkata Satyanarayana Manikyala Rao and Another Vs. Mandela Narasimhaswami and Others, ought to have furnished a complete answer to the issue raised before the lower appellate court as the facts of that case were in pari materia with those obtaining in the present case. Their Lordships of the Supreme Court held that purchase of undivided shares of co-parceners at an execution sale and delivery of possession of that share has the effect of interrupting adverse possession. It was further held that in a case where A purchases at an auction sale in execution of a decree against a father and his sons forming a Joint Hindu Family, the undivided shares of the four sons, the adverse possession of the shares so purchased by A by the sons is interrupted by delivery of symbolical joint possession to A and the limitation for a suit has, therefore, to be computed for the purposes of Article 144 of the Limitation Act from the date of delivery of such symbolical possession.

7. That precisely is the situation in the present case. Ram Prasad having purchased two fifth shares of Radha Ballabh and Satya Narain and he having been delivered possession thereof, even if symbolically the adverse character of possession of Radha Ballabh continuing from 3-10-53 ceased after 17-7-62. That being to, the dictum of the Supreme Court supra applied in terms to the present case and the lower appellate court was clearly wrong in ignoring this decision. It is apparent that if the period of limitation is computed from 17-7-62 the suit would be within time.

8. That brings me to the question whether the lower appellate court was right in taking the view that a suit for partition was a condition precedent for enabling the Plaintiffs to ask for the relief of possession. That question must be unhesitatingly answered in the negative. In the first place, any one of the co-sharers would bring a suit for possession against a trespasser. However, in the present case all the co-sharers had joined in the suit. Where the entire body of co-sharers brings a suit for possession against a trespasser it is not necessary that the same must be preceded by a decree for partition as against one who has no right to be in possession. The exercise of partitioning the property was hence unnecessary in the facts of the present case.

9. In the result, the appeal succeeds and is allowed. The judgments and decree passed by the courts below are set aside. The suit of the Plaintiff Appellants is decreed in its entirety. There will however, be no order as to costs.