DARSHAN SINGH AND ORS. A

v.

GURDEV SINGH

SEPTEMBER 5, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.] B

Limitation Act, 1963 : Sections 3, 6, 7 and 8—Schedule—Article 65.

Limitation—Suit for possession—Minor—Suit filed within 12 years—Held barred by Limitation—Suit should have been filed within three years of cessation of disability i.e. attaining majority. C

Constitution of India, 1950: Article 136.

Concurrent findings as to fabrication of will for gaining wrongful possession of suit property—Interference with by Supreme Court—Held not justified. D

The respondent, a minor at the time of death of his father, attained majority on April 17, 1977. On November 4, 1982 he filed a suit for possession of the suit properties within 12 years under Article 65 of the Schedule to the Limitation Act, 1963. In appeal to this Court, it was E **contended for the appellant that the suit ought to have been filed within three years from the date of cessation of respondent's disability and since it was filed beyond three years it was barred by limitation.**

Disposing of the appeal, this Court

F

HELD : 1. The suit of the respondent is barred by limitation. Though in a given case, the defendant may have perfected title by adverse possession during minority of the plaintiff by remaining in continuous and uninterrupted possession and enjoyment of the immovable property asserting his own exclusive right, title or interest in immovable property to G **the knowledge of the plaintiff, on cessation of the disability, even though the period of limitation prescribed in third Column of the Schedule might have expired by efflux of time, section 6 of the Limitation Act, 1963 longates the right and enlarges the limitation and entitles the minor, insane or idiot to institute the suit or make the application within the same period prescribed in the Third Column of the Schedule to the Act, after the** H

A **disability to which the minor, the insane or the idiot has been subjected to, ceased. [97-B; F; G]**

2. Section 8 of the Limitation Act is a special exception to Section 6 or 7 and the period of limitation though barred under section 3 is available to persons under disability specified in section 6 or 7 and the right to lay
B **the suit or application after disability ceases under section 6 or 7 is regulated by the limitation prescribed by section 8. In other words, in each case the litigant is entitled to a fresh starting period of limitation from the date of cessation of disability subject to the condition that in no case the period extended by this process under section 6 or 7 shall exceed three**
C **years from the date of cessation of the disability. [99-A-B-C]**

3. All the courts have concurrently found as a fact that the appellant had fradulently brought a fabricated will to gain wrongful possession of the suit property and was in enjoyment thereof. After the judgment of the High Court, the respondent came into possession of the suit property in
D **execution of the decree. Therefore, it is not a fit case for interference under Article 136 of the Constitution. [99-D-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6034 of 1994.

E From the Judgment and Order dated 2.3.94 of the Punjab & Haryana High Court in R.S.A. No. 31 of 1987.

Ashim Vachar, S.Prasad, Ms. Bharati Anand and Mohil Mathur for the Appellants.

F Hardev Singh and Ms. Madhu Moolchandani for the Respondent.

The following Order of the Court was delivered :

Leave granted.

G The appeal arises from the judgment and decree dated March 2, 1994 in R.S.A. No. 31/87 of Punjab & Haryana High Court. The respondent filed the suit for possession on November 4, 1982. Admittedly, he was a minor at the time of the death of his father. It is also an admitted fact that he attained majority on April 17, 1977. He filed the suit for possession of
H the plaint schedule proportion within 12 years under Article 65 of the

Schedule to the Limitation Act, 1963, Act 21 of 1963 (for short 'the Act'). A
It is contended for the appellant that the suit ought to have been filed within three years from the date of cessation of respondent's disability but it was filed beyond three years and that, therefore, the suit is barred by limitation. A conjoint reading of ss. 6(1) and 8 of the Act shows that where a person is entitled to institute a suit, the limitation begins to run for a B
minor or insane, or an idiot to institute the suit be within the same period after the disability has ceased as would otherwise have been allowed from the time specified therefor in the 3rd Column of the Schedule i.e. 3 years from the date of cessation of disability. We find force in the contention.

Section 3 of the Act posits that the period of limitation applicable to C
a suit or other proceedings, if the period prescribed in the Schedule gets expired, the suit or application becomes barred by limitation though the right may subsist. However, s.3 says that in particular circumstances, the limitation gets modified by the provisions of ss. 4 to 24 of the Act. Article 65 in Part V of the Schedule regulates limitation of the suits relating to D
immovable property. For possession of immovable property or any interest therein based on title, the period of limitation prescribed is 12 years which begins to run when the possession of the defendant becomes adverse to the plaintiff. Section 6 deals with legal disability under sub-s. (1) thereof where a person entitled to institute a suit or at the time from which the prescribed period is to be reckoned. A minor or insane or an idiot, may E
institute the suit or make an application within the same period, after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third Column of the Schedule. In other words, though in a given case, the defendant may have perfected title by adverse possession during minority of the plaintiff by remaining in continuous and F
uninterrupted possesion and enjoyment of the immovable property asscerting his own exclusive right, title or interest in immovable property to the knowledge of the plaintiff, on cessation of the disability, even though the period of limitation prescribed in third Column of the Schedule might have expired by efflux of time, s. 6 alongates the right and enlarges the limitation G
and entitles the minor, insane or idiot to institute the suit or make the application within the same period prescribed in the Third Column of the Schedule to the Act, after the disability to which the minor, the insane or the idiot has been subjected to, ceased. Section 8 makes special exception to s.6. In other words, notwithstanding the availablily of limitation in the Third Column of the Schedule prescribed under the relevant Article, the H

A suit or application shall be filed within three years from the cessation of the disability or the death of a person affected thereby engrafting the language thus :-

> "8. Special exceptions. - Nothing in Section 6 or in Section 7 applies to suits to enforce rights of pre-emptions, 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.

In other words, s.8 is a proviso to s.6 or 7. A combined effect of s.6 and 8 read with Third Column of the appropriate Article would be that a person under disability may sue after cessation of disability within the same period as would otherwise be allowed from the time specified therefor in the third column of the Schedule but special limitation as an exception has been provided in s.8 laying down that extended period after cessation of the disability would not be beyond three years from the date of cessation of the disability or death of the disabled person. Take for instance, if a minor acquires a cause of action to sue for possession of immovable property but due to being minor, s.6 aids him to lay the suit wihin the same period of 12 years after attaining majority. Suppose he dies, his legal representatives would be entitled to lay the suit within three years from the date of his attaining majority though he may die after the expiry of three years since his right to file the suit is extended only up to three years from the date of his attaining majority. In other words, cessation of disability of death whichever occurs earlier. The date of death of disabled person does not provide further extended cause of action, a period beyond three years after the disability ceases and death. Take another instances, where a cause of action for possession has arisen when the minor was at the age of 16 years. On his attaining majority, he gets three years' period but Article 65 Column 3, gives him the right to file a suit within 12 years from the date the defendant acquires prescriptive title. His cessation of disability and expiry of three years under s.8 does not take away his right to file the suit within 12 years under Article 65. In other words the benefit of s.6 is available to him. Take a third case, where the cause of action had arisen to a minor when he was at the age of 4 years. During his minority, the 12 years' prescriptive period expired by afflux of time at his attaining 16 years but on his becoming major, his disability ceases. Therefore, he gets a further period of three years from the date of cessation of disability to file

a suit for recovery of the possession from the defendant who claims adverse possession to the plaintiff. Thus considered that s.8 is a special exception to s.6 or 7 and the period of limitation though barred under s.3, remained available to persons under disability specified in s.6 or 7 and the right to lay the suit or application after disability ceased under s.6 or 7 is regulated by the limitation prescribed by s.8. A B

In other words, in each case, the litigant is entitled to a fresh starting period of limitation from the date of cessation of disability subject to the condition that in no case the period extended by this process under s.6 or 7 shall exceed three years from the date of cessation of the disability. Consider from this perspective, we are clearly of the opinion that the suit of the respondent is barred by limitation. But unfortunately, the attention of the High Court was not drawn to s.8 of the Act which laid down to its contra conclusion. C

However, we have to see whether it is a fit case for our interference under Article 136 of the Constitution. All the courts including the High Court concurrently found as a fact that the appellant is a stranger to the family of the respondent and that he forged the 'Will', the last testimentary disposition of the father of the respondent and on its basis the appellant wrongfully came into the possession of the suit property. Thereby he had fraudulently brought a fabricated 'Will' to gain wrongful possession of the suit property and was in enjoyment thereof. After the judgment of the High Court, the respondent came into possession of the suit property in execution of the decree. Therefore, we decline to interfere in this appeal. However, we point out that the respondent may not be entitled for *mesne* profits or damages against the appellant. The appeal is accordingly disposed of. No costs. D E F

T.N.A. Appeal disposed of.