A DAYA SINGH & ANR.

v.

GURDEV SINGH (DEAD) BY L.RS. & ORS.

(Civil Appeal No. 5339 of 2002)

B JANUARY 07, 2010

[TARUN CHATTERJEE AND AFTAB ALAM, JJ]

Limitation Act, 1963:

C *Schedule – Article 58 – Suit for declaration – Dismissed by courts below holding the same as barred by limitation on the ground that it was filed after 18 years of the compromise – HELD: Question of filing of suit before the right accrued to plaintiffs by compromise could not arise until and unless* D *infringement of that right was noticed by one of the parties – Right to sue accrued a week prior to filing of the suit when a clear and unequivocal threat to infringe that right by defendants was given as they refused to admit the claim of plaintiffs – Therefore, the suit cannot be held to be barred by* E *limitation – Judgment of High Court set aside and matter remitted to it for decision on merits expeditiously – Cause of action.*

A compromise relating to shares in the suit property was entered into between the plaintiff-appellants and the F **predecessors-in-interest of the defendant-respondents on 26.10.1972. The plaintiffs filed a suit on 21.8.1990 for declaration that they were in possession as owner of 1/ 9th share and in joint possession of half of the 2/3rd share of the land along with the respondents and the entries** G **in the revenue record of rights should be corrected. The trial court dismissed the suit accepting the defendants' plea that the suit having been filed after 18 years of the compromise, was barred by limitation in view of Article 58 of the Schedule to the Limitation Act, 1963 whereunder**

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the suit should have been filed within three years of the compromise. The plaintiffs having remained unsuccessful in the first appeal as also in the second appeal, filed the appeal.

Allowing the appeal, the Court

HELD:1.1. In the instant case, the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants was given, as they refused to admit the claim of the appellants, only seven days before filing of the suit. Therefore, as noted in paragraph 16 of the plaint, the suit was filed within three years from the date of infringement and, as such, the suit cannot be held to be barred by limitation. [Para 10] [202-E]

Mt.Bolo vs. Mt. Koklan and others **AIR 1930 PC 270, relied on.**

C. Mohammad Yunus vs. Syed Unnissa and others **1962 SCR 67 = AIR 1961 SC 808, referred to.**

1.2. The courts below including the High Court had proceeded entirely on a wrong footing that the cause of action arose on the date of entering into the compromise and, therefore, the suit was barred by limitation. Whether or not the compromise decree was acted upon and whether delivery of possession had taken place has to be decided by the trial court before it could come to a proper conclusion that the suit was barred by limitation. [Para 10] [202-E-G]

1.3. The question of filing the suit before the right accrued to the plaintiffs by compromise could not arise until and unless infringement of that right was noticed by one of the parties. The High Court fell in grave error in holding that the suit was barred by time, and ignored to appreciate that the right of the appellants to have the

A **revenue record corrected arose when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. The High Court was not justified in holding that mere existence of a wrong entry in the revenue records**
B **does not, in law, gave rise to a cause of action within the meaning of Article 58 of the Schedule to the Act. [Para 10] [202-H; 203-A-C]**

1.4. The impugned judgment of the High Court on the question that the suit was barred by limitation cannot be
C **sustained. Therefore, the judgment of the High Court is set aside and the matter remitted back to it for decision on merits expeditiously. [Para 11] [203-C-D]**

Case Law Reference:

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AIR 1930 PC 270	**relied on**	**para 7**
1962 SCR 67	**referred to**	**para 8**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
E 5339 of 2002.

From the Judgment & Order dated 10.9.2001 of the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 3416 of 1997.

F D.K. Agrawal, Sudhir Kumar Gupta, Anurag Pandey, R.P. Singh, Miihhir Kumar Chaudhary for the Appellants.

Geetanjali Mohan, Vivek Sharma, R.C. Gubrele for the Respondents.

G The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. This appeal is directed against the final judgment and order dated 10th of September, 2001 of a learned Judge of the Punjab and Haryana High Court
H dismissing a second appeal being Regular Second Appeal

No.3416 of 1997, inter alia, on the ground that the suit for declaration and injunction filed on 21st of August, 1990 was barred by limitation under Article 58 of the Limitation Act, 1963 (in short 'the Act') which could only be filed within three years from the date when the cause of action arose. A

2. Therefore, the only question that needs to be decided in this appeal by us is : whether the suit for declaration and injunction could be held to be barred by limitation as the same was filed after 18 years of the alleged compromise between the parties. For the purpose of deciding this question on limitation, as noted hereinabove, which was only urged by the learned counsel for the appellants before us and the High Court also decided the second appeal on this question of limitation, we need to state the facts which would be relevant for the purpose of deciding the question of limitation only. The facts are as follows: B C D

3. The plaintiffs/appellants were the owners and in joint possession of 1/9th share in the entire land measuring about 286 Kanals and 5 Marlas of Khewat No.359 Khatoni No.702-710 situated in village Sukhchain falling under Sirsa Tehsil. Two other individuals named Jang Singh and Jangir Singh were the owners of 2/3rd share in the said total land. The appellants and the two individuals were co-owners in the said total land. These two individuals, namely, Jang Singh and Jangir Singh had sold their entire 2/3rd share to the respondents on 7th of June, 1965 for a sale consideration of Rs.33,500/-. The said share of land was already under mortgage with the respondents. In 1965, the respondents got their names mutated in the relevant record of rights as owners of the area purchased by them as indicated in the aforesaid sale deed. The appellants filed a pre-emption suit being Pre-emption Suit No.377 of 1966 in the Court of the Subordinate Judge, Class II, Sirsa against the respondents for possession of 2/3rd share sold to them and got it decreed in their favour by the trial court by a judgment and decree dated 30th of November, 1967. E F G H

A 4. The respondents appealed against the aforesaid decision before the Appellate Court, namely, District Judge, Hissar who dismissed their appeal on 15th of June, 1968. Feeling aggrieved against the aforesaid concurrent judgments of the courts below, a second appeal was filed before the B Punjab and Haryana High Court which was dismissed on 26th of May, 1972. Subsequent to the dismissal of the second appeal, the appellants and the respondents compromised their dispute and such compromise was reduced into writing on 26th of October, 1972. According to this compromise, the C appellants were entitled to retain half of the 2/3rd share of the land in dispute and the respondents were to retain the other half. The respondents admitted in their compromise deed that the appellants had taken possession of their share of land. When this compromise was presented before the Division D Bench of the High Court of Punjab and Haryana in Letters Patent Appeal which came to be registered as LPA No.86 of 1973, the Division Bench of the High Court disposed of the said Letters Patent Appeal in terms of the said compromise petition. From the records, it would also be evident that the report of the Kanoongo dated 16th of January, 1976 and the Roznamcha E No.252 dated 14th of April, 1996 recorded that the possession of 95 Kanals and 8 ½ Marlas had been delivered to the appellants. After such compromise was effected, the appellants thereafter filed a suit for declaration that they were in possession as owner of 1/9th share and in joint possession of F half of 2/3rd share (thus totaling of 4/9th shares) of land measuring 286 Kanals and 5 Marlas of Khewat No.359 Khatoni No.702-710 along with respondents and the entries in the revenue record of rights should only be corrected in the Court of the Senior Subordinate Judge, Sirsa. In paragraphs 15 and G 16 of the plaint of this suit which concerned the question of limitation, the plaintiffs/appellants had averred as follows :

"15. That the defendants were approached and requested to admit the claim of the plaintiffs and to get the revenue H entries corrected accordingly in their favour, the

defendants have refused to do so, hence this suit.

16. That the cause of action for this suit first arose on 26.10.1972 when the parties filed a compromise in the Hon'ble High Court and then on 14.4.76 when the plaintiffs were delivered possession of 1/3 share of land in the khewat at the spot and now about a week back when the plaintiffs have for the first time come to know about the wrong entries in the revenue records and now when the defendants have refused to admit the claim of the plaintiffs."

On the basis of the averments made as noted herein above, the plaintiffs/appellants filed the aforesaid suit for the following reliefs:

"(a) That the plaintiffs are the joints owners in possession, in equal share of 1/3rd share in land measuring 286 kanal 5 marlas comprised in khewat No.359, Khatoni NO.702 to 710, all land as per jamabandi for the year 1985-86, situated in the area of village Sukhchain, Tehsil and Distt.Sirsa and that the revenue records showing the defendants to be the owners of 12/18th share of 2/3rd share in the aforesaid land is wrong and is hence liable to be corrected in favour of the plaintiffs, and

(b) That the defendants are the owners of only 1/3rd share in the aforesaid khewat, and

(c) That the plaintiffs who are already the owners of 2/18th share of 1/9th share in the khewat have thus become the total owners of 4/9th share in the entire khewat No.359 and that the plaintiffs are entitled to get the mutation of change of ownership sanctioned accordingly in their favour, may please be passed in favour of the plaintiffs and against the defendants with cost of this suit."

5. The respondents entered appearance and filed written statement denying the material allegations made in the plaint.

A Leaving aside the other facts in the present case, we may state here that a specific defence taken by the respondents in their written statement was to the effect that the suit was barred by limitation in view of Article 58 of the Act because the suit having been filed after about 18 years of entering into the compromise
B by the parties in the High Court in the Letters Patent Appeal, must be filed within three years from the date of entering into the alleged compromise by the parties. Accordingly, the respondents alleged that the suit must be dismissed on the ground of limitation. We make it clear that since the only
C question involved in this appeal is relating to the question of limitation, we have not considered the other aspects of the matter in this judgment. After the parties had entered appearance and led evidence in support of their respective cases also on the point of limitation, the trial court held, *inter*
D *alia*, that the suit was barred by limitation in view of Article 58 of the Act as the cause of action arose in 1972 i.e. on the date of compromise entered into by the parties. Accordingly, the suit was dismissed by the trial court also on the ground of limitation. Feeling aggrieved, the plaintiffs/appellants filed an appeal before the Additional District Judge, Hissar who also dismissed
E the appeal of the appellants, *inter alia*, holding that the suit was barred by limitation. Consequent thereupon, the appellants approached the High Court in second appeal and the High Court also dismissed the appeal holding that under Article 58 of the Act a declaratory suit must be filed within three years of
F arising the cause of action for filing the suit. The High Court held in the impugned judgment that the cause of action arose when the parties had entered into the compromise, that is, on 26th of October, 1972 and, therefore, the suit having been filed on 21st of August, 1990 was barred by time since it was filed after
G 18 years from the date of the said compromise.

6. The appellants still feeling aggrieved by the impugned judgment of the High Court have filed the instant Special leave petition and on grant of leave the appeal was heard in the
H presence of the learned counsel for the parties.

7. As noted herein earlier, the only question, therefore, to be decided is whether the mere existence of an adverse entry in the revenue records had given rise to cause of action as contemplated under Article 58 or it had accrued when the right was infringed or threatened to be infringed. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues. In support of the contention that the suit was filed within the period of limitation, the learned senior counsel appearing for the plaintiffs/appellants before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned senior counsel strongly relied on a decision of the Privy Council reported in AIR 1930 PC 270 [*Mt.Bolo vs. Mt. Koklan and others*]. In this decision their Lordships of the Privy Council observed as follows :-

> "There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

8. A similar view was reiterated in the case of *C.Mohammad Yunus vs. Syed Unnissa and others* [AIR 1961 SC 808] in which this Court observed :

> "the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

A 9. In the case of *C. Mohammad Yunus* (supra), this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is atleast a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse B entry into the revenue record cannot give rise to cause of action.

10. Keeping these principles in mind, let us consider the admitted facts of the case. In para 16 of the plaint, it has been clearly averred that the right to sue accrued when such right was infringed by the defendants about a week back when the C plaintiffs had for the first time come to know about the wrong entries in the record of rights and when the defendants had refused to admit the claim of the plaintiffs. Admittedly, the suit was filed on 21st of August, 1990. According to the averments made by the plaintiffs in their plaint, as noted hereinabove, if D this statement is accepted, the question of holding that the suit was barred by limitation could not arise at all. Accordingly, we are of the view that the right to sue accrues when a clear and unequivocal threat to infringe that right by the defendants when they refused to admit the claim of the appellants, i.e. only seven E days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in Paragraph 16 of the plaint, the suit was filed. Therefore, the suit which was filed for declaration on 21st of August, 1990, in our view, cannot be held to be barred by limitation. Therefore, the F courts below including the High Court had proceeded entirely on a wrong footing that the cause of action arose on the date of entering into the compromise and, therefore, the suit was barred by limitation, whether or not the compromise decree was acted upon and whether delivery of possession had taken place G has to be decided by the trial court before it could come to a proper conclusion that the suit was barred by limitation. In this view of the matter, we do not find any ground to agree with the findings of the High Court that the suit was barred by time because of its filing after 18 years of entering into the H compromise. The question of filing the suit before the right

accrued to them by compromise could not arise until and unless infringement of that right was noticed by one of the parties. The High Court in the impugned judgment, in our view, had fallen in grave error in holding that the suit was barred by time and had ignored to appreciate that the rights of the appellants to have the revenue record accrued first arose in 1990 when the appellants came to know about the wrong entry and the respondents failed to join the appellants in getting it corrected. In our view, the High Court was not justified in holding that mere existence of a wrong entry in the revenue records does not, in law, give rise to a cause of action within the meaning of Article 58 of the Act. No other point was urged before us by the learned counsel for the parties.

11. In view of our discussions made herein above, the impugned judgment of the High Court on the question that the suit was barred by limitation cannot be sustained. Therefore, the judgment of the High Court is set aside and the matter may be remitted back to the High Court for decision on merits. The High Court is requested to dispose of the second appeal at an early date preferably within six months from the date of supply of a copy of this order to it.

12. Accordingly, the impugned order of the High Court is set aside. The appeal is allowed to the extent indicated above. There will be no order as to costs.

R.P. Appeal allowed.