DINDYAL & ANR.

v.

RAJARAM

April 17, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Hindu Succession Act, 1956, s. 14—Widow who has made gift of husband's property to daughter and thereafter reoccupied it as trespasser whether acquires rights of full ownership under s. 14(2)—"Possessed" in s. 14(1) meaning of.

C.P. Tenancy Act, 1920, s. 104(1) read with Art. I, Second Schedule—Article is inapplicable when suit is filed not as dispossessed tenant but as reversioner of last male holder—Act does not enable trespassers on tenancy land to acquire right against third parties by adverse possession.

The defendants were the grandsons of G's brother between whom and G there had been division of Hindu undivided family property. G died in 1920 and his widow L entered into possession of his property, namely, land held in tenancy in the former Central Provinces. In 1936 L made a gift of the property to her daughter N. Thereupon K, G's daughter by his pre-deceased wife, filed a suit seeking declaration that the gift-deed was not binding on her. The suit was decreed in 1937. N died in 1941 and thereafter N's children entered into possession of the property. K died in 1943. The possession of N's children continued till June 1, 1951 when L wrongfully dispossessed them under the guise of enforcing the decree obtained by K. Thereafter L continued in exclusive possession of the suit property. In 1952 she gifted some of those properties to one R and the remaining properties she gifted to the defendants in 1957. She died in 1960. Meanwhile in 1956 the Hindu succession Act had come into force. The plaintiff after the death of L filed a suit claiming the properties in question as daughter's son and reversioner of G. The suit was decreed and the decree was upheld by the High Court. The High Court came to the conclusion that L's possession of the suit properties after June 1, 1951 was that of a trespasser, and as such she did not become an absolute owner of those properties on the coming into force of the Hindu Succession Act. It also held that the plaintiff became entitled to the suit properties on the death of L as the nearest reversioner of G. In appeal to this Court by special leave it was contended on behalf of the appellants: (i) that as soon as L took possession of the suit properties from the children of N, her previous possession as widow of G sprang up again and thereafter she was holding the properties in her capacity as the widow of G and hence she became absolute owner of those properties when the Hindu Succession Act came into force; (ii) that the suit for possession of a holding by a person claiming to be tenant from which he had been dispossessed could be filed under s. 104(1) of the C.P. Tenancy Act, 1920 read with Art. I of the Second Schedule thereto only within three years of the date of dispossession, and the present suit not having been filed within that period, the result must be that L had acquired title to the suit properties by adverse possession.

HELD: (i) The gift made by L and in favour N was a valid gift and N came into possession of the suit properties on the strength of that gift. L could have no interest in those properties thereafter. Therefore, when L took possession of those properties in 1951, she did so as a trespasser, and she continued in possession thereafter only as a trespasser. As such, he could not be held to have acquired any right under the Hindu Succession Act because before any property can be said to be "possessed"

A by a Hindu woman as provided in s. 14(1) of the Hindu Succession Act, two things are necessary (a) she must have a right to the possession of that property and (b) she must have been in possession of that property either actually or constructively. [301 C-E]

S. S. Munnia Lal v. *S. S. Rajkumar & Ors.* [1962] Supp. 3 S.C.R. 418 and *Kuldip Singh & Ors.* v. *Surain Singh & Ors.* C.A. No. 138/64 dt. 1-5-67, relied on.

B (ii) Article 1 of the Second Schedule read with s. 104(1) of the C.P. Tenancy Act was not applicable to the present suit as it had been filed not on the basis of wrongful dispossession of a tenant but on the basis of reversionary rights. There was nothing in the C.P. Tenancy Act to enable a trespasser to impose himself as a tenant on the landlord by means of adverse possession of the holding as against the tenant for a period of three years. Similarly, it was not possible to hold that the C tenancy right could have been acquired in a holding so as to affect the rights of third parties by being in wrongful possession of that holding for a period of three years. If it was otherwise, valuable rights of third parties could have been jeopardised for no fault of theirs. [303 A-E]

In 1951 the plaintiff had two different rights over the suit properties one under the gift referred to earlier and the other as reversioner. One was an existing right, the other was a prospective one. His right under the gift must be held to have been extinguished under Art. I, Second D Schedule read with s. 104(1) of the Act, but his right to those properties as reversioner arose only after the death of L. That right could not have been barred even before it accrued. As against the prospective reversioners L was holding the suit properties as a trespasser. She had acquired no rights in those properties as against them. Till her death it was not possible under law to predicate who would have been her husband's nearest reversioner on the date of her death. [303 E-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 404 of 1967.

Appeal by special leave from the judgment and order dated September 28, 1966 of the Madhya Pradesh High Court. In Second Appeal No. 938 of 1965.

F *R. L. Kohli* and *J. C. Talwar*, for the appellants.
S. N. Prasad for *B. P. Singh*, for the respondent
The Judgment of the Court was delivered by

Hegde, J. This appeal by special leave arises from the decision of Madhya Pradesh High Court in second appeal No. 938 of 1965 on its file.

G The facts found which are no more in dispute, and relevant for the purpose of deciding the questions of law arising for decision in this appeal may now be briefly stated. One Gulli Gotamia had two sons by name Girdharilal and Nandoo. From the material on record, it is not possible to find out the date of death of Gulli Gotamia but admittedly he died leaving behind him his H aforementioned two sons. Girdharilal and Nandoo were divided. Girdharilal died on May 17, 1920. His first wife had pre-deceased him. But at the time of his death, his second wife Ladli Bahu was alive. On his death his widow took possession of his pro-

perties. Girdharilal's brother Nandoo had two children. Gajadhar and Lachhi. Lachhi died issueless. Gajadhar also is dead. He has two children Dindayal (1st defendant) and Prameshwar Dayal (second defendant). Girdharilal had a daughter from his pre-deceased wife by name Konsa Bai. She died in 1943. Ladli Bahu had a daughter by name Nanni Bai who died in 1941. The children of Nanni Bai, Narbada Bai, Raja Ram, Ram Narain and Gaya Prasad are the plaintifis in the suit.

Ever since the death of Girdharilal, Ladli Bahu was in possession of the suit properties. She gifted those properties to her daughter Nanni Bai on July 30, 1936 and put the donee in possession of the same. Thereupon Konsa Bai filed a suit in 1937 seeking a declaration that the gift deed in question is not binding on her and that it cannot come in her way in inheriting the suit properties on the death of Ladli Bahu. That suit was decreed on May 3, 1937. As mentioned earlier, Nanni Bai died in 1941. On her death, the plaintiffs came into possession of the suit properties. Ladli Bahu took wrongful possession of the suit properties from the plaintiffs on June 1, 1951 under the guise of enforcing the decree in the suit filed by Konsa Bai. Thereafter she continued to be in exclusive possession of the suit properties. On May 27, 1952, she gifted some of those properties to one Rameshwar Prasad and the remaining properties she gifted to the appellants on March 21, 1957. She died on April 9, 1960. The Hindu Succession Act came into force on June 17, 1956.

Two questions namely (1) What is the effect of the possession taken by Ladli Bahu on June 1, 1951 and (2) Did Ladli Bahu become the full owner of those properties in view of s. 14(2) of the Hindu Succession Act, 1956, were presented to the High Court as well as to the courts below for decision.

The High Court came to the conclusion that Ladli Bahu's possession of the suit properties after June 1, 1951, was that of a trespasser and as such she did not become an absolute owner of those properties on the coming into force of the Hindu Succession Act. It also held that the plaintiffs became entitled to the suit properties on the death of Ladli Bahu as the nearest reversioner of Girdharilal.

It was urged on behalf of the appellants that as soon as Ladli Bahu took possession of the suit properties from the plaintiffs, her previous possession as the widow of Girdharilal sprang up again and thereafter she was holding the properties in her capacity as the widow of Girdharilal and hence she became the absolute owner of those properties when the Hindu Succession Act came into force. On the other hand, it was urged on behalf of the respondents, that as soon as Ladli Bahu parted with the possession of the suit properties, in favour of her daughter under a gift deed, she lost

A all rights in those properties. Therefore when she acquired possession in 1951, she did so as a trespasser. As she had no right to possess those properties when the Hindu Succession Act came into force, she acquired no rights under s. 14(2) of the Hindu Succession Act.

The High Court and the courts below have come to the con-
B clusion that the gift made by Ladli Bahu in favour of Nanni Bai is a valid gift and that Nanni Bai came into possession of the suit properties on the strength of that gift. Hence she must be held to have had no interest in those properties thereafter. Therefore when Ladli Bahu took possession of those properties in 1951, she did so as a trespasser. This conclusion, in our opinion, is un-
C assailable. If we come to the conclusion that she continued as a trespasser on the date the Hindu Succession Act came into force and even thereafter till her death, then she cannot be held to have acquired any right under the Hindu Succession Act because before, any property can be said to be "possessed" by a Hindu woman, as provided in s. 14(1) of the Hindu Succession Act, two things are necessary (a) she must have had a right to the possession of that
D property and (b) she must have been in possession of that property either actually or constructively—see *S. S. Munna Lal* v. *S. S. Rajkumar and Ors.*(1) : *Kuldip Singh and Ors.* v. *Surain Singh and Ors.*(2).

The next question is whether in view of s. 104(1) read with Art. 1 of the Second Sch. of the C.C. Tenancy Act, 1920 (to be
E hereinafter referred to as the Act) it can be held that Ladli Bahu had acquired a title to possess the suit properties.

Section 104(1) of the Act provides that the suits and applications specified in the Second Schedule therein shall be instituted or made within the time prescribed in that Schedule for them respectively; and every such suit instituted and application made
F after the period of limitation so prescribed shall be dismissed. Art. 1 of the Second Schedule is as follows :

Description of suit or application.	Period of limitation	Time from which period begins to run.
For possession of a holding by a person claiming to be a tenant from which he has been dispossessed or excluded
G from possession by any person.	Three years	The date of dispossession or exclusion.

Admittedly the suit properties were held on tenancy right. Girdharilal was the protected tenant of these properties. Under the gift mentioned earlier, the plaintiffs became the tenants of those properties. In view of Art. 1 of the Second Schedule read with s. 104(1) of the Act, the plaintiffs as tenants could not have sued for
H possession of the suit properties after June 1, 1954. It was urged on behalf of the appellants that in view of the principle underlying

(1) [1962] Supp. 3 S.C.R. 418 (2) C.A. No. 138/1964 dt 1-5-1967

s. 28 of the Indian Limitation Act, 1908, which principle is not confined to suits and applications for which limitation is prescribed under that Act but is of general application, the plaintiffs' right to the suit properties must be held to have been extinguished. In other words, the contention was in view of the aforementioned provisions, the plaintiffs had not merely lost their right to sue for possession of the suit properties, their right in the properties itself had been extinguished. It is well settled that the principle underlying s. 28 of the Indian Limitation Act, 1908 (same as s. 27 of the Indian Limitation Act, 1963) is of general application. It is not confined to suits and applications for which a period of limitation is prescribed under the Limitation Act.

Art. 1 of the second schedule to the Act applies only to suits brought by a person claiming to be a tenant for possession of a holding from which he has been dispossessed or excluded from possession by any person. In other words before this Art. can apply, the following conditions must be fulfilled.

(1) The plaintiff must claim to be the tenant of the holding which is the subject matter of the suit;

(2) The suit must be one for possession; and

(3) The suit must be on the ground that he had been dispossessed or excluded from possession by any person.

Though the plaintiffs in this suit were at one time the tenants in the suit holding in view of the gift in favour of their mother, they have not brought the present suit as tenants of that holding. They have brought it on the strength of their title as the nearest reversioners to Girdharilal. Nor is their dispossession in 1951 a part of the cause of action for the present suit. This is not a suit for possession on the ground that the plaintiffs had been earlier dispossessed. This is a suit for possession on the strength of the new title acquired by the plaintiffs after the death of Ladli Bahu. Therefore Art. 1 of the second schedule does not apply to the present suit. The limitation for this suit is governed by the provisions of the Limitation Act, 1908.

Further it is one thing to say that a tenant who was in possession of the tenancy holding at the time of dispossession had lost his rights in the holding but it is another thing to say that a trespasser had become the tenant of that holding at the end of the prescribed period. It must be remembered that C. P. Tenancy Act is a special Act. It only governs those matters for which provision is made therein. In other respects the general law continues to apply. The Act does say that a tenant's right in respect of any property can be acquired by adverse possession. We do not think

A that the provisions of the Act enabled (The Act has been since repealed) a trespasser to impose himself as a tenant on the landlord by means of adverse possession of the holding as against the tenant for a period of three years. Similarly, it is not possible to hold that a tenancy right could have been acquired in a holding so as to affect the rights of third parties by being in wrongful B possession of that holding for a period of three years. If it is otherwise, valuable rights of third parties could have been jeopardised for no fault of theirs. Take the case of a widow who was in possession of a tenancy holding. The prospective reversioner to her husband's estate would have had no right in that holding during her life time. Is it reasonable to hold that the reversioner C would have lost his rights in the holding even before he acquired them because someone was in possession of that holding adversely to the widow for a period of three years? That would not have been the position even under Art. 144 of the Limitation Act, 1908. It could not be different under the Act. A right cannot be barred even before it accrues. The fact that the tenant dispossessed happened to become the reversioner on the death of the widow D cannot make any different in law.

In 1951, the plaintiffs had two different rights over the suit properties—one under the gift referred to earlier and the other as reversioner. One was an existing right, the other was a prospective one. Their right under the gift must be held to have been extinguished under Art. 1 Sch. II read with s. 104 of the Act. But E their right to those properties as reversioner arose only after the death of Ladli Bahu. That right could not have been barred even before it accrued. As against the prospective reversioners Ladli Bahu was holding the suit properties as a trespasser. She had acquired no right in those properties as against them. Till her death, it was not possible under law to predicate who could have been her F husband's nearest reversioner on the date of her death.

In the result this appeal fails and it is dismissed with costs.

G.C *Appeal dismissed.*

[The above judgment dated April 17, 1970 was reviewed by the Court on Review Petition No. 38 of 1970. The following G order was passed on October, 17, 1970 :]

ORDER

Correction to be made at appropriate places in the Judgment by showing the name of Rajaram as plaintiff instead of the names referred to as of "plaintiffs", and also substitution to be made of H the word "plaintiff" for the word "plaintiffs" wherever it occurs in the Judgment. No order as to costs. The security will be refunded. Mesne profits deposited by the appellants to be paid over to the respondent Rajaram.