

Parwatabai Vs Sonabai and others

Court: Supreme Court of India

Date of Decision: Aug. 12, 1996

Acts Referred: Limitation Act, 1963 " Article 64, 65

Citation: (1996) 6 AD 652 : AIR 1997 SC 381 : (1996) AIRSCW 3751 : (1996) 7 JT 661 : (1997) 115 PLR 712 : (1996) 6 SCALE 375 : (1997) 1 SCC 531 : (1996) 4 SCR 571 Supp : (1996) 6 Supreme 669

Hon'ble Judges: K. Ramaswamy, J; G. B. Pattanaik, J

Bench: Division Bench

Advocate: U.R. Lalit, for the Appellant; S.V. Deshpande, for the Respondent

Final Decision: Dismissed

Judgement

1. Leave granted.

2. We have heard learned Counsel on both sides.

3. The admitted facts are that the lands in dispute belonged to Punjab and on his demise, his widow Parwatabai had succeeded to his estate in

1941. Consequently, she became the owner of a limited estate. It is the appellant's case that Parwatabai had executed a registered gift deed in

favour of her husband in 1941 and ever since they are in possession and enjoyment of the lands. Admittedly, the respondents are daughter of

Parwatabai. It is their case that on the demise of their mother, they became the owners of the property and were in possession of the property till

1976 when they were dispossessed and as a consequence the suit was filed for possession based on title. Though it was specifically not pleaded

on title, admittedly on fact situation suit was filed under Article 65 of the Schedule to the Limitation Act, 1963 (for short, the "Act"). The trial Court

negated the respondents' claim and dismissed the suit. On appeal, the trial Court decreed the suit holding that the respondents had on the demise

of their mother in 1966 succeeded to the estate of their father. Therefore, they are entitled to the possession since the suit was filed within 10 years

under Article 65 of the Act, Thus, this appeal by special leave.

4. Shri U.R. Lalit learned Counsel for the appellant, contended that since the husband of the appellant remained in possession, pursuant to the gift

deed executed by Parwatabai, by operation of explanation (b) to Article 65, burden is on the respondents to establish as to when the possession

of the appellant became adverse and they failed to discharge the same. Therefore, the appropriate article applicable to the facts would be Article

64 and not Article 65. We find no force in the contention. Admittedly, after the demise of Punjab, Parwatabai succeeded as widow's estate prior

to 1941 and that, therefore, she was only life estate holder to enjoy the estate for her life time. Under the gift deed, what she could bequeath was

enjoyment of life estate and not right and title of the Property of Punjab. Consequently, on her demise, the respondents being heirs of Punjab are

entitled to assert their right to the property of their father on the basis of their title.

5. Article 65 of the Act postulates that for possession of immovable property or any interest therein based on title, when the possession of the

defendant becomes adverse to the plaintiff, the suit has to be filed within 12 years. Therefore, when the plaintiffs asserted their title on the basis of

succession to the estate of their father, it is for the appellant to prove as to on which date the appellant's possession has become adverse to the

respondents' title. In this case, the appellate Court and the High Court found that the appellant had not established as to what was the exact date

from which the adverse possession started running. Since Parwatabai died in 1966, admittedly, the plaintiff had filed the suit in 1966 within 10

years. Under those circumstances, the appellant had not perfected the title by prescription. The courts below have rightly applied Article 65 and

decreed the suit. It is not vitiated by any error of law warranting interference.

6. The appeal is accordingly dismissed, but in the circumstances, without costs.