

(2012) 06 CAL CK 0010

Calcutta High Court

Case No: S.A. No. 264 of 2009

Sashi Bhusan Mahato

APPELLANT

Vs

Sushil Kumar Pal

RESPONDENT

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**Date of Decision:** June 19, 2012**Citation:** (2012) 4 CHN 366**Hon'ble Judges:** Tapan Kumar Dutt, J**Bench:** Single Bench**Advocate:** Mihir Chakraborty and Gautam Kumar Das, for the Appellant; Rabindranath Mahato and Jayeeta Chakraborty, for the Respondent**Final Decision:** Allowed

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### Judgement

Tapan Kumar Dutt, J.

Today the learned Advocate appearing on behalf of the plaintiff/respondent has made and completed his submissions. The learned Advocate for the defendants/appellants has made his submissions in reply.

2. The hearing is concluded.

3. The Court now proceeds to pass the following judgment.

4. Facts of the case, briefly, are as follows:

The plaintiff/respondent filed Title Suit No. 141 of 1996 which was placed before the learned 3rd Munsiff at Midnapore. Such suit was filed against the defendants/appellants and/or their predecessors as mentioned in the plaint. In the said suit the plaintiff/respondent prayed for a decree for declaration that the plaintiff has right, title, interest and possession over the suit property and for permanent injunction against the defendants so that the defendants do not disturb the alleged peaceful possession of the plaintiff. The suit property is a "Haat" known as Bhimpur Haat which belonged to the Midnapur Zamindari Company and the said Company transferred the suit property to the plaintiff by a registered deed of sale

dated 20th March, 1954 as alleged in the plaint. The plaintiff contended that the defendants have no right, title, interest and possession in the suit property. The plaintiff's further case was that the father of the defendant Nos. 7 and 8, namely, Abinas Chandra Mahato was entrusted with the work of looking after the recording of the suit property during the R.S. operation since the plaintiff had complete faith upon the said Abinas Chandra Mahato. According to the plaintiff the said Abinas Chandra Mahato illegally and fraudulently got the suit property recorded in the name of the defendants and the plaintiff and thereafter the L.R. record-of-rights was prepared accordingly in the name of the plaintiff and the defendants. The plaintiff has alleged that such recording of the name of the defendants in the record-of-rights is erroneous. The plaintiff has further alleged that the defendants on the basis of the illegal record-of-rights threatened the plaintiff with dispossession from the suit property on 04.12.1996 by denying the plaintiff's title and thereafter the plaintiff had to file the said suit.

5. The defendants concerned filed written statement and contested the said suit. According to the defendants, the suit property was actually purchased by the plaintiff and the defendants jointly from the said Midnapur Zamindari Company by way of aforesaid registered deed of sale but the relationship between the plaintiff and the defendants was so close that their said deed of sale was allowed to be executed in favour of the plaintiff only.

6. According to the defendants the plaintiff and the defendants used to possess the suit property jointly and they also collected "tolas" from the suit property jointly. The defendant also took the point of limitation as according to the defendants the suit was filed after more than fifty years from the recording of the suit property in the record-of-rights. It further appears that the defendants relied upon the fact that some time in the year 1974 the plaintiff along with the defendants and/or their predecessor-in-interest had jointly executed a deed of gift in favour of a local club and in such gift deed it was stated that the plaintiff and the defendants and/or their predecessor-in-interest were the joint owners of the suit property. Such deed of gift has been marked as exhibit "D" in the suit.

7. The said suit came up for hearing and the learned Trial Court by its judgment and decree dated 28th May, 2008 dismissed the said suit upon a finding that the said suit is barred by limitation. The learned Trial Court found that the plaintiff never filed any objection against the recording of the suit property in the R.S. record-of-rights and the L.R. record-of-rights. The learned Trial Court also came to the conclusion that the plaintiff has not denied the genuineness of the deed of gift and the learned Trial Court found that the plaintiff is not the sole owner of the suit property and the plaintiff has also admitted that he has no knowledge about who collects the "tolla". The learned Trial Court further found that the plaintiff has no manner of possession over the suit property nor he has any idea about the suit property. The learned Trial Court ultimately found that the plaintiff has no right,

title, interest and possession over the suit property.

8. The plaintiff being aggrieved by and dissatisfied with the judgment and decree passed by the said learned Trial Court, filed Title Appeal No. 110 of 2008 which was placed before the learned 4th Court of Additional District Judge, Paschim Midnapore. The learned lower Appellate Court by judgment and decree dated 17th March, 2009 allowed the said Title Appeal and set aside the judgment and decree passed by the learned Trial Court.

9. With regard to the point of limitation the learned lower Appellate Court found that

it is proved that plaintiff Sashi Bhusan is the absolute owner of the suit property and question of limitation under Article 65 does not arise, because possession of plaintiff is admitted by the defendant though their claim is as co-sharer, but whatever it may be co-ownership is not proved, rather, plaintiff is sole and absolute owner of the property and he has his possession.

10. The learned lower Appellate Court found that since the defendants could not prove any registered deed of sale in their favour, title in respect of the suit property did not pass to the defendants and on the basis of Exhibit "D" (gift deed) one cannot conclude that the defendants have acquired title in respect of the suit property.

11. However, it appears that on the point of limitation the learned lower Appellate Court did not make any further observation and/or findings apart from what has been indicated above. Of course, the learned lower Appellate Court found that the Exhibits 3 and 4, which are the aforesaid registered deeds of sale, and a Kabuliat dated 15.01.1954, respectively, lends support to the contention of the plaintiff and the defendants could not produce any document to show that they had collected "tolas" from the said "haat" at any point of time. The learned lower Appellate Court found that the learned Trial Court was not correct in placing much reliance upon exhibit-"D" i.e. the gift deed which could not have conferred any title upon the defendants.

12. Having heard the learned Advocates for the respective parties in the present appeal it appears to this Court that the most important question to be decided first in the present appeal is the question as to whether or not the suit was barred by law of limitation. This is so because if this Court comes to a finding that the suit was barred by law of limitation then the question of going into the merits of the suit need not arise. Of course, if this Court finds that the suit was not barred by the law of limitation then in that event it would become necessary to go into the other points involved in the present appeal.

13. Some facts are required to be taken into consideration while considering the question of limitation. In the present case there is no dispute with regard to the fact that exhibit 3 being the registered deed of sale was executed by the said Midnapore

Zamindari Company in favour of the plaintiff only some time in the year 1954. There is also no dispute with regard to the fact that the gift deed executed by the plaintiff and the defendants and/or their predecessor-in-interest was executed some time in 1974 and in such gift deed the plaintiff along with the defendants and/or their predecessor-in-interest have been shown to be the owners of the property which have been gifted to a local club. The suit has been filed by the plaintiff in the year 1996. It will appear from the records that a khajna receipt dated some time in April, 1961 indicates that the name of the defendants and/or their predecessors-in-interest have been recorded as the "Prajā" and it also indicates that the plaintiff himself had tendered the said khajna to the authorities concerned on behalf of the said defendants and/or their predecessors-in-interest. Several khajna receipts have been exhibited in the suit some of which are found of earlier days. The learned Advocate appearing on behalf of the defendants/appellants submitted that the suit is clearly barred by the law of limitation considering the facts and circumstances of the case and the evidence on record. It appears that the record-of-rights placed in evidence by both the parties indicate a common fact that the name of the plaintiff and the defendants appeared in such record-of-rights in respect of the suit property.

14. The learned Advocate appearing on behalf of the plaintiff/respondent submitted that the date of entry in the records of right of the names of the plaintiff and the defendants does not constitute a cause of action. According to the said learned Advocate even if the entries were made long time back in the said record-of-rights, it was not necessary for the plaintiff to file a suit merely because such entries have been made affecting adversely the interest of the plaintiff. The said learned Advocate submitted that the cause of action in respect of the said suit arose the day when the defendants actually threatened the plaintiff, on the basis of the said erroneous entries in the record-of-rights. In support of such contention the learned Advocate cited the decision reported at [Ibrahim Vs. Sharifan](#), and AIR 1991 MP 368. There cannot be any dispute with regard to the propositions of law laid down in the said reports. Thus this Court finds it is not necessary to discuss in any further details the said reported cases, as the principle of law laid down in the said reported cases cannot be disputed. Two other reported cases were cited by the said learned Advocate and the said two reported cases were also cited by the learned Advocate for the defendants/appellants. One of such judgments is reported at [Daya Singh and Another Vs. Gurdev Singh \(Dead\) by L.Rs. and Others](#), It will appear from paragraph 16 of the said reports that in the plaint concerned in the said reports it had been clearly averred that the right to sue accrued when such right was infringed by the defendants concerned in the said case about a week back when the plaintiffs had for the first time come to know about the wrong entries in the record-of-rights and when the said defendants concerned had refused to admit the claim of the plaintiffs. It will thus appear that factually the present case is different from the facts of the said reported case. In the present case the plaintiff was quite aware of the

erroneous entry in the record-of-rights since long time back and not merely a week before the filing of the plaint. In 1974 the gift deed was executed wherein the defendants had also appeared as owners of a part of the suit property and the learned Advocate for the plaintiffs/respondents submitted that since the records of right contained the name of the defendants the defendants were shown as owners in the said deed. Thus the plaintiff was aware of the existence of the names of the defendants in the records of right way back in 1974 at least. The other reported case is the one reported at [Khatri Hotels Private Limited and Another Vs. Union of India \(UOI\) and Another](#), and reference was made by the learned Advocate for the plaintiff/respondent to Paragraph 30 of the said reports, wherein the Hon"ble Court was pleased to consider the real intent and meaning of Article 58 of the Limitation Act. The Hon"ble Court was pleased to observe that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. The Hon"ble Court was further pleased to make it clear that successive violation of right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

15. In the present case one of the khajna receipts being an exhibit in the suit indicates that the plaintiff himself had tendered khajna on behalf of the defendants way back in 1961 and the suit was filed in the year 1996. Thus the plaintiff had knowledge about the erroneous entry in the record-of-rights at least in 1961. That apart, in the plaint the plaintiff has alleged that the plaintiff had reposed complete faith and confidence in the said Abinas Chandra Mahato during R.S. operation which took place long ago. The fact that the names of the defendants appeared as the co-owners in respect of the part of the suit property in the gift deed, executed in 1974, indicates that the defendants and/or their predecessor-in-interest had made an effort to question the alleged exclusive title of the plaintiff. In respect of such effort on the part of the defendants and/or their predecessor-in-interest the plaintiff allowed the said defendants to declare themselves as co-owners in respect of the part of the suit property. Such act of the defendants and/or their predecessor-in-interest was a threat to the plaintiffs title to the property and such threat took place in 1974. Thus after twenty two years (from 1974) the plaintiff chose to file the said suit for declaration and injunction.

16. This Court is of the view, considering the facts and circumstances of this case and the materials on record, that the suit is barred by the law of limitation. Thus the suit was not maintainable.

17. In view of the above finding, this Court further finds that it is not necessary for this Court to go into the other questions that were raised in the appeal.

18. Accordingly, the appeal is allowed by setting aside the judgment and decree passed by the learned lower Appellate Court. The judgment and decree passed by the learned Trial Court is also modified to this extent that the ultimate conclusion

arrived at by the learned Trial Court that the suit filed by the plaintiff is barred by the law of limitation shall stand but the other findings made by the learned Trial Court on the other points with regard to the title of the plaintiff and/or the defendants in respect of the suit property shall not be given effect to. This is so because after having found that the suit is barred by the law of limitation, it was not necessary for the learned Trial Court to go into the other questions involved in the suit.

19. Let the lower Court records be sent back to the learned Court concerned immediately.

20. There will be, however, no order as to costs. Urgent certified xerox copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.