

SRI SHYAM SUNDER PRASAD AND ORS.

A

v.

SRI RAJ PAL SINGH AND ANR.

NOVEMBER 29, 1994

[K. RAMASWAMY, N.P. SINGH AND N. VENKATACHALA, JJ.]

B

Limitation Act, 1908—Article 142—Suit for declaration of title and possession—Burden of proof—Plaintiff to prove his possession is within 12 years from date of filing of suit and of his title to the property.

The plaintiff filed Title Suit for declaration of title to and possession of a plot as owner. The trial court decreed the suit. The appellate court found that though the plaintiff had title and possession at one point of time but there was no definite date of dispossess or discontinuation of the plaintiff Schedule property. The plaintiff had failed to prove possession of the suit land within 12 years of the suit when the possession was discontinued. The suit was dismissed therefore as barred by limitation under Article 142 of the limitation Act, 1908. This appeal had been filed from the judgment of the High Court dismissing the second Appeal in limine.

C

D

The question for consideration was on whom the burden of proof lies in a suit based on title and for possession.

E

Dismissing the appeal, this Court

HELD : Under the old Limitation Act, 1908, all suit for possession whether based on title or on the ground of previous possession were governed by Article 142 wherein the plaintiff while in possession was dispossessed or discontinued in possession. In view of Article 142, the burden, undoubtedly, is on the plaintiff to prove that he has title to and has been in possession of the property within 12 years from the date of the filing of the suit. It is necessary for the plaintiff, therefore, when the suit is laid on the basis of title, to establish not only that he has title to the property but also he was dispossessed or discontinued his previous possession within 12 years on the date of the filing of the suit. When the defendant did not come to the court to establish his adverse possession by prescription, the burden of proof does not rest on the defendant. The burden, therefore, is always on the plaintiff to prove that he had

F

G

H

A possession within 12 years from the date of the filing of the suit and he has title to the property. [195 A, D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3298 of 1984.

B From the Judgment and Order dated 29-8-83 of the Patna High Court in A.No. 262 of 1980.

B.B. Singh for the Appellants.

The following Order of the Court was delivered :

C This appeal by special leave arises from the judgment of the High Court at Patna in Second Appeal No. 262/90 dated August 29, 1993 dismissing the Second Appeal in limini. The appellant-plaintiff filed Title Suit No. 238/26 of 1962-65 for declaration of title to and possession of Plot No. 1093 and 1994 as owner and for possession of Plot No. 1095 as Ijradar.

D The trial court decreed the suit, the appellate court found that though the plaintiff had title and possession at one point of time but there is no definite date of dispossession or discontinuation of the plaint-schedule property. The plaintiff had failed to prove possession of the suit land within 12 years of the suit when the possession was discontinued. It is not known as to when he came into possession. The suit was, therefore, barred by limitation under Article 142 of the Limitation Act, 1908 for short 'the old Act'. It was accordingly dismissed.

F Article 142 of the First Schedule and First Division to the old Limitation Act, provides that "for possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession," the period of 12 years begins to run from the date of dispossession or discontinuation. Article 144 adumbrates that "for possession of immovable property or any interest therein not hereby otherwise specially provided for", the suit shall be laid within 12 years when the possession of the defendant becomes adverse to the plaintiff.

G Article 64 of the Limitation Act, 1963 (for short, 'the new Act') provides that "for possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed," the period of limitation of 12 years begins to run from the date of dispossession. Article 65 provides that "for possession of immovable property or any interest therein based on title, the period of limitation of 12 years begins to run when the possession of the

H

defendant becomes adverse to the plaintiff." Under the old Limitation Act, all suits for possession whether based on title or on the ground of previous possession were governed by Article 142 wherein the plaintiff while in possession was dispossessed or discontinued in possession. Where the case was not one of dispossession of the plaintiff or discontinuance of possession by him. Article 142 did not apply. Suits based on title alone and not on possession or discontinuance of possession were governed by Article 144 unless they were specifically provided for by some other Articles. Therefore, for application of Article 142, the suit is not only on the basis of title but also for possession.

The question, therefore, is on whom the burden of proof lies in a suit based on title and for possession. In view of Article 142 of the old Act, the burden, undoubtedly, is on the plaintiff-appellant to prove that he has title to and has been in possession and he was dispossessed and discontinued his possession within 12 years from the date of the filing of the suit. It is necessary for the plaintiff, therefore, when the suit is laid on the basis of title, to establish not only that he has title to the property but also he was dispossessed or discontinued his previous possession within 12 years on the date of the filing of the suit. If the suit is merely based on adverse possession, then Article 144 gets attracted. The defendant did not come to the court to establish his adverse possession by prescription. The burden of proof, therefore, does not rest on him. It is, therefore, for the plaintiff/appellant to prove that not only he had title to the plaint schedule property but also he had possession within 12 years and he was dispossessed or discontinued his possession within the period of limitation prescribed under Article 142. The burden, therefore, is always on him to prove that he had possession within 12 years from the date of the filing of the suit and he has title to the property. The burden does not shift on the defendant. The burden of proof, therefore, has rightly been placed on the appellant by the appellate court. We do not find any error of law in the findings recorded by the appellate court warranting interference, though the High Court dismissed the appeal in limini. The appeal is accordingly dismissed but without costs.

A.G.

Appeal dismissed.