

MOHINDER SINGH (DEAD) THROUGH LRs.

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v.

PARAMJIT SINGH & ORS.

(Civil Appeal No. 10222 of 2017)

MARCH 28, 2018

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[DIPAK MISRA, CJI AND A. M. KHANWILKAR, J.]

Punjab Limitation (Custom) Act, 1920 – Art.2(b) of the Schedule and ss.5 and 8 – Limitation of suits relating to alienation of ancestral immovable property – Gift Deed by one ‘U’ in favour of predecessor of the respondents in respect of the land in question – Suit filed by original appellant for declaration that the gift deed was void – Suit disposed of in terms of the compromise wherein the original appellant was to be given the land in question after the death of ‘U’ – Execution petitions filed by original appellant, dismissed – Eventually, original appellant filed fresh suit for possession – Plea of respondents that the suit was barred by limitation – Contested by appellants relying on the second part of Art.2(b) of the 1920 Act as also s.14 of the 1963 Act – Held: Second part of Art.2(b) postulates that the time from which limitation period would commence to file a suit for possession would be the date on which the “declaratory decree is obtained” – In execution proceedings, mere passing of the judgment by Court is not enough but a decree has to be drawn on the basis of declaratory judgment which is then put into execution – In the present case, even though the declaratory judgment was pronounced in the previous suit on 20th August, 1963, on the basis of compromise entered, the declaration could be given effect to only after the death of ‘U’ – Decree being a conditional decree was enforceable only thereafter – Decree sheet drawn on 19th August, 1972 and the suit for possession filed thereafter on 11th June, 1974, was thus, within the prescribed period of limitation in terms of Art.2(b) of the Schedule of 1920 Act – Further, s.14 of the 1963 Act is also attracted in the present case and the tests specified in s.14 are satisfied for showing indulgence to the plaintiff to exclude the period during which the plaintiff pursued execution proceedings for reckoning the period of limitation for filing the suit for possession – Trial Court and

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A *appellate court right in decreeing the suit in favour of the original appellant by rejecting the objection regarding the suit being barred by limitation – Limitation Act, 1963 – ss.14, 29(2) and Art.136 – Limitation Act, 1908 – ss.4 to 25.*

B *Words & Phrases – ‘Obtained’ – Meaning of, in the context of Punjab Limitation (Custom) Act, 1920 – Art.2(b) of the Schedule.*

Allowing the appeal, the Court

C **HELD: 1.1 Punjab Limitation (Custom) Act, 1920** was enacted to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointments of heirs by persons who follow custom in the area to which the Act would apply. Section 8 of the 1920 Act postulates that when any person obtains a decree declaring that an alienation of ancestral immovable property or appointment of an heir is not binding on him according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of an heir. For such a declaratory suit, the limitation is provided in the schedule. Article 2 of the Schedule also envisages that the period of limitation for a suit for possession of ancestral immovable property which has been alienated, on the ground that alienation is not binding on the plaintiff according to custom, *inter alia*, within three years from the date the declaratory decree is obtained. In the present case, the declaratory decree was passed on 20th August, 1963 on the basis of the compromise between the original appellant and the predecessor of the respondents. However, that being a conditional decree, the right to sue for possession would not have accrued until the death of ‘U’ which happened only on 14th January, 1971. [Paras 13, 14] [1040-D-F; 1041-F, G]

G **1.2 The expression “declaratory decree is obtained”** would take within its fold the event of drawing of or preparation of the decree. Notably, the Trial Court as well as the Appellate Court had accepted the stand taken by the plaintiff that the compromise decree was prepared or drawn on 19th August, 1972. Even the High Court had not reversed that finding. [Para 15] [1042-C]

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1.3 The expression “obtain”, as understood in common parlance and defined in Concise Oxford English Dictionary, would mean - “acquire, secure, have granted to one”. This may also encompass obtaining a copy of the decree. In central legislation, the expression is made explicit by providing “for obtaining a copy of the decree”. The expression “obtained”, therefore, would presuppose, in the context of reckoning limitation period for filing a suit for possession, of securing a certified copy of the decree (decree-sheet) on the basis of which, the suit for possession could be instituted. In other words, the date on which the decree is drawn would be the relevant date for commencement of limitation period. As in the case of execution proceedings, mere passing of the judgment by the Court is not enough but a decree has to be drawn on the basis of such declaratory judgment which is then put into execution. Applying the same analogy, if a suit for possession is founded on a declaratory decree it could proceed only after a drawn up decree on the basis of a declaratory judgment of the Civil Court is made ready and obtained by the decree-holder. The expression “the declaratory decree is obtained”, therefore, assumes significance. If the legislature intended to provide it differently, it could have couched the provision as “the date on which the declaratory judgment is passed”. The legislature in enacting 1920 Act, however, consciously used the expression “the declaratory decree is obtained”, which intrinsically includes the date on which a formal decree is drawn or prepared and not merely the date on which a declaratory judgment is passed by the Court. Taking any other view would be rewriting the expression “the declaratory decree is obtained” and doing violence to the legislative intent. Besides, the expression “obtained” in Article 2(b) is prefixed by expression “is”; and further it follows with expression “whichever is later”. Even this would reinforce the position that the date on which the declaratory decree is drawn could ignite the period of limitation for instituting a suit for possession and not a mere declaratory judgment rendered by the Court in the previous suit (for declaration simplicitor). Taking any other view will render the last part of Article 2(b), providing for “whichever is later” nugatory and otiose. [Paras 16, 17] [1042-F-G; 1043-A; 1043-B-E]

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A 1.4 As in the present case, even though the declaratory judgment was pronounced by the Court in the previous suit on 20th August, 1963, on the basis of compromise that declaration could be given effect to only after the death of ‘U’. The decree as passed was enforceable only thereafter. The decree sheet having been made ready on 19th August, 1972 and the suit for possession filed three years thereafter on 11th June, 1974, was thus within the prescribed period of limitation in terms of Article 2(b) of the Schedule to the 1920 Act. [Para 20] [1045-C, D]

C 1.5 The fact situation of the present case would certainly satisfy the tests specified in Section 14 of the 1963 Act, for showing indulgence to the plaintiff to exclude the period during which the plaintiff pursued execution proceedings for reckoning the period of limitation for filing the suit for possession on 11th June, 1974. The expanse of Section 14 of the Limitation Act, 1963 is not limited to mere jurisdictional issue but also other cause of a like nature. D What is posited by Section 14 of the 1963 Act is the exclusion of time of proceeding bona fide in Court without jurisdiction or other cause of a like nature, for which the concerned Court is unable to entertain the *lis*. [Paras 22, 23] [1047-F; 1048-A]

E 1.6 Section 5 of the 1920 Act is explicit and it unambiguously postulates that the suit referred to in the First Schedule to the said Act would be governed by the provisions contained in Sections 4 to 25 (inclusive) of the Limitation Act, 1908. Section 14 of the 1963 Act would be attracted in the fact situation of the present case, in light of Section 5 of the 1920 Act and also Section 29(2) of the 1963 Act coupled with the fact that there is no express provision in the 1920 Act, to exclude the application of Section 14 of the 1963 Act. Trial Court and the Appellate Court were right in decreeing the suit in favour of the predecessor of the appellants by rejecting the objection regarding the suit being barred by limitation. The High Court committed manifest error in overturning the decisions of the Trial Court and the First Appellate Court. [Para 24, 26 and 28] [1048-C; 1049-A; 1049-D, E]

H *Lala Balmukund (Dead) Through LRs. v. Lajwanti and Ors. (1975) 1 SCC 725 : [1975] SCR 44 ; Consolidated Engineering Enterprises v. Principal Secretary,*

MOHINDER SINGH (DEAD) THROUGH LRs. v. PARAMJIT SINGH & ORS. 1031

Irrigation Department and Ors. (2008) 7 SCC 169 : [2008] 5 SCR 1108 ; Union of India and Ors. v. West Coast Paper Mills Ltd. and Anr. (2004) 3 SCC 458 : [2004] 2 SCR 642 – relied on. A

W.B. Essential Commodities Supply Corpn. v. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr. (1999) 8 SCC 315 : [1999] 2 Suppl. SCR 399 ; CST v. Parson Tools and Plants (1975) 4 SCC 22 – referred to. B

Case Law Reference

[1975] SCR 44	relied on	Para 18	
[1999] 2 Suppl. SCR 399	referred to	Para 19	C
[2004] 2 SCR 642	relied on	Para 21	
(1975) 4 SCC 22	referred to	Para 21	
[2008] 5 SCR 1108	relied on	Para 27	

CIVIL APPELLATE JURISDICTION: Civil Appeal No.10222 of 2017. D

From the Order dated 25.04.2012 of the High Court of Punjab and Haryana at Chandigarh in RSA No.1446 of 2012.

Mahabir Singh, Sr. Adv., Ms. Preeti Singh, Rakesh Dahiya, Gagan Deep Sharma, Ms. Swati Jindal, Advs. for the Appellants. E

Manoj Swarup, Devvrat, Soheb Rahman, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. The singular question that emerges for consideration in this appeal is: whether Section 14 of the Limitation Act, 1963 (for short “the 1963 Act”), has no impact in view of the provisions contained in Punjab Limitation (Custom) Act, 1920 (for short “the 1920 Act”) and, if so, will it be applicable in the facts of this case? F

2. The relevant undisputed facts of this case can be delineated as under: G

A gift deed was executed by one Ujjagar Singh in respect of the lands, which included two parcels of lands, measuring 7 Kanals 17 Marlas

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A bearing Khasra No.46/16, situated in the revenue estate of Village Pandori, Tehsil Batala; and 11 Kanals 4 Marlas bearing Khasra Nos.25/4/5, No.25/4/1, 25/3/3 and 25/3/6 situated in the revenue estate of Village Ghuman, Tehsil Batala, District Amritsar (Punjab), to one Rura Singh son of Surendra Singh (predecessor of the respondents) vide Gift Deed dated 6th March, 1963. The said land was ancestral land in the hands of Ujjagar Singh wherein Mohinder Singh (predecessor of the appellants) and others were coparceners. Resultantly, the original appellant Mohinder Singh filed a suit for declaration that the gift deed was void, being Suit No.367 of 1963 before the Sub Judge, First Class, Batala. During the pendency of the said suit, a compromise was arrived at between Rura Singh (predecessor of the respondents) and Mohinder Singh (predecessor of the appellants). The parties made statements before the Trial Court that as per the compromise, Mohinder Singh was to be given the land comprised in Khasara No.46/16 situated at Village Pandori, Tehsil Batala and 26/4/2/4, 26/3/3 Min East, 26/4/1, 26/3/3 Min West of Village Ghuman after the death of Ujjagar Singh out of the entire land and Mohinder Singh also gave up his house. A statement was made by Rura Singh before the Court which reads thus:

E “Stated that decree for declaration for ownership regarding Khasra no. 46/16 situated at Pandori, No.26/4/2/4, 26/3/3 Min. East. 26/4/1, 26/3/3 Min West situated at Ghuman be passed in favour of the plaintiff. Remaining suit be dismissed. Parties shall bear their own expenses.”

3. On the basis of the said arrangement, the Court disposed of the suit on 20th August, 1963 on the basis of compromise in the following terms:

F “In view of the above statements of the parties, the suit as prayed for is decreed herewith solely in respect of khasra number 46/16 of village Pandori and 26/4/2/4, 26/3/3 Min east, 26/4/1, 26/3/3 Min west of village Ghuman against the defendant no.2. The suit against defendant No.1 will stand dismissed. The parties will bear their own costs.”

G 4. Mohinder Singh then took out execution petition No.430 of 1964 on 23rd December, 1964. The said execution petition was dismissed being premature, by the Executing Court vide order dated 7th August, 1965 which reads thus:

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“COPY OF ORDER: As per decision of D.H. counsel the execution is dismissed as pre-mature and be consigned record-room on the Satisfied.” A

5. The said Ujjagar Singh died on 14th January, 1971, whereafter Mohinder Singh took out second execution petition on 18th February, 1971. He also took out an application for summoning the original file with the decree sheet. This application was filed on 23rd August, 1971 before the Executing Court. It then transpired that the decree was prepared and the decree sheet was drawn on 19th August, 1972. However, the execution petition instituted by Mohinder Singh came to be dismissed for default on 2nd February, 1973. On the same day, Mohinder Singh took out third execution petition which was dismissed on 2nd February, 1974 on the ground that the same was not maintainable. The relevant portion of the order passed by the Executing Court in Execution Application No.11/1973 reads thus: B C

“3. The following issue was framed:- D

1) Whether the decree is executable? O.P.D.H.

4. From the perusal of the decree sheet copy of which is Ex. D.H.1. it is abundantly clear that the decree which is sought to be executed is a declaratory one and it ensure to the benefit of the decree holder after the death of the vendor. **The decree-holder can only file a separate suit if so advised for possession of the suit property but the execution is not maintainable. The declaratory decree cannot be executed and the possession of the land in question cannot be granted to the decree holder in execution of the same.** This issue is decided against the decree-holder. E F

In view of my above said finding the application is dismissed. File be consigned to the Record Room.”

(emphasis supplied)

6. Taking cue from the observations in this order and left with no other option for getting possession of the land referred to in the decree passed in suit No.367 of 1963, Mohinder Singh filed a fresh suit on 11th June, 1974, in the Court of Civil Judge, Junior Division, Batala, being C.S. No.173/1974. He asserted that the declaratory decree was prepared on 19th August, 1972 and because of the order passed by the Executing G

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- A Court on 2nd February, 1974, he had to file the suit for possession on the basis of the cause of action which had arisen on 19th August, 1972 and because of the refusal of the respondents (defendants) to deliver the suit lands to him. The respondents filed written statement in which they admitted the fact that the decree was prepared on 19th August, 1972, but asserted that the present suit was barred by limitation as the same was
- B filed after lapse of 3 years from the date of death of Ujjagar Singh. In that, Ujjagar Singh died on 14th January, 1971 whereas the suit has been filed on 11th June, 1974. Further, the factum of preparation of decree on 19th August, 1972 would be of no avail as the decree had been passed in the previous suit on 20th August, 1963. The date on which the previous
- C suit was decided would be the relevant date. However, subsequently the respondents (defendants) filed additional written statements so as to withdraw the admission made earlier that the decree sheet was prepared on 19th August, 1972.

7. The Civil Judge, Junior Division, Batala vide his judgment dated
- D 20th May, 2008 negated the objection taken by the respondents regarding the suit being barred by limitation. The relevant portion of the judgment of the Trial Court reads thus:

- E “13. Article 2(b) of the Punjab Limitation (Customs) Act 1920 provides the period of limitation of three years for a suit for possession of an ancestral immovable property which has been alienated, on the ground that alienation is not binding on the plaintiff according to custom where such declaratory decree is obtained. The time from which period of limitation is to begin is the date on which right to sue accrues or the date on which declaratory decree is obtained whichever is later. It is the case of the defendants
- F that Ujjagar Singh died on 14.01.1971 the entry of the death of Ujjagar Singh is also placed on the record as Ex.D1 and the period of limitation is to be computed from 14.01.1971, when the right to sue accrues to the plaintiff on the death of Ujjagar Singh and the present suit is not within the period of three years as the suit has
- G been filed on 11.06.1974. **However the article 2(b) of the Punjab Limitation (Customs) Act 1920, provides that period of three years for the institution of the suit is to be ascertained from the date on which right to sue accrues or the date on which declaratory decree is obtained whichever**

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is later. It is claimed by the plaintiff that decree sheet was prepared on 19.08.1972, the fact which is admitted by the defendants while filing the original written statement. However, it is argued by counsel for the defendants that order in the execution application No. 32 of 1971, dated 19.8.1972 on which the decree is alleged to have been prepared by the plaintiff is in fact with regard to the dismissal of the said execution application due to the non appearance of the parties. **I am of the considered opinion that only on the ground that said order dated 19.08.1972 relates with the dismissal of the execution it cannot be said that decree sheet was not prepared during the proceedings of the said execution. It has already been held that the decree sheet was prepared during the execution bearing No. 32 of 1971. Even if it is considered that the decree sheet was prepared on dated 29.07.1972 and not on 19.08.1972 as discussed above even then the present suit is within the period of limitation i.e. 3 years as per article 2(b) of the Punjab Limitation (Customs) Act 1920.**

14. It is also argued by counsel for the defendants that while filing the replication inconsistent pleas taken by the plaintiff from the plaint already fled by him and the replication filed by the plaintiff can be taken into consideration. In support of his contention, counsel for the defendants has relied upon 2001 (3) Civil Court Cases 565 (Rajasthan) Gurjant Singh Versus Krishan Chander and Ors. But I am of the considered view that in fact the defendants themselves have taken the inconsistent pleas by filing the amended written statement from the original written statement. In the amended written statement it is claimed by the defendants that no decree sheet was prepared on 19.08.1972 and the decree sheet of Civil suit No. 367 of 14.06.1963 has been passed on 20.8.1963 itself. The plaintiff has only contested the pleadings of the amended written statement by filing the replication and accordingly it cannot be said that the plaintiff has taken the inconsistent pleas from the pleas already taken by him in his plaint, while filing the replication.

15. In view of discussion above, this issue No. 1 is decided in favour of the plaintiff. The suit of the plaintiff is also held within

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A the period of limitation and issue No.2 is also decided in favour of the plaintiff and against the defendants.”

(emphasis supplied)

B 8. Aggrieved, the respondents (defendants) filed a first appeal before the District Court being Civil Appeal No.373 of 2008 (12th June, 2008) which was heard by the Additional District Judge, Gurdaspur and was finally dismissed on 2nd February, 2012. The District Court rejected the argument of the respondents on the issue of suit being barred by limitation, by observing thus:

C “...But learned counsel for the appellants has contended that decree sheet may be prepared at any time but it relates back to the date of judgment. Though it is a settled proposition of law that decree follows the judgment, but in the instant case there is no fault on behalf of respondent no.1 who has able to prove on record that when he filed the suit while challenging the gift deed which

D was decided on the basis of the compromise and statements of the parties on 20.08.1963 and thereafter he filed an application for execution of the same in which objections were raised by Rura through counsel and execution was dismissed being premature and after the death of Ujjagar Singh in the year 1971 he again moved an execution applicable in which the fresh decree sheet was ordered to be prepared which was ultimately prepared

E in the presence of the parties and during those proceedings no copy of the decree sheet which has now been referred by learned counsel for the appellants has placed on file nor any such objection has been raised that decree sheet has already been prepared and more so, the decree sheet was ordered to be prepared in presence

F of both the parties. Later on execution was dismissed on filing of objections by appellants by learned Sub Judge 1st Class, Batala with the observation that it enures to the benefit of the decree holder after the death of the vendor and same was ultimately ordered to be dismissed on 02.02.1974 and if one computed the period of limitation from the day of preparation of decree i.e. in the year 1972 because the day when the execution application has been dismissed by Court of Shri A.S. Rampal, the then Sub Judge 1st Class, Batala, by observing then the suit of respondent no.1 is certainly within limitation.”

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9. The respondents then preferred a second appeal before the High Court of Punjab and Haryana at Chandigarh, being Regular Second Appeal No.166 of 2012 (O&M), which has been allowed by the learned Single Judge of the High Court, vide judgment dated 25th April, 2012. The High Court accepted the argument of the respondents in the following words:

“I have carefully considered the aforesaid contentions. It is undisputed that the earlier suit was decided on the basis of compromise vide judgment dated 20.08.1963. From the judgments of the courts below, it appears that formal decree in the said suit was not drawn immediately but was drawn on 19.08.1972 when plaintiff moved for the same because while seeking execution of the said decree, the plaintiff learnt that formal decree had not been drawn. **However, formal decree drawn on 19.08.1972 on the basis of compromise judgment dated 20.08.1963 shall relate back to the date of judgment i.e. 20.8.1963. Merely because formal decree was drawn on 19.08.1972, it cannot be said that limitation period started on 19.08.1972. On the contrary, earlier declaratory decree was passed vide judgment dated 20.08.1963 and therefore, limitation period in the instant case commenced on 14.01.1971 on the death of Ujjagar Singh. Consequently, suit filed on 11.06.1974 i.e. after expiry of limitation period of three years is patently barred by limitation. Finding of the courts below to the contrary is patently perverse and illegal and, therefore, unsustainable.**

Substantial question of law arises for determination in this second appeal as to whether suit is barred by limitation and finding of the courts below holding the suit to be within the limitation is perverse and illegal. The said substantial question of law is answered in favour of defendants/appellants holding that the suit is barred by limitation.

Resultantly the instant second appeal is allowed. Judgments and decrees of both the courts below are set aside. Suit filed by the respondent No.1-plaintiff stands dismissed. The parties are, however, left to suffer their respective costs throughout.”

(emphasis supplied)

- A 10. In this backdrop, the present appeal, by special leave, has been filed by the original plaintiff Mohinder Singh who died during the pendency of the appeal before this Court and consequently, his heirs and legal representatives have been brought on record to espouse the cause. According to the appellants, the suit for possession was filed by Mohinder Singh on the basis of the declaratory decree which was within the limitation period of three years as provided by Article 2(b) of the Schedule to the 1920 Act. Inasmuch as, Section 2(b) of the said Act stipulates that the limitation would commence from the date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later. In the present case, the right to sue accrued after the death of Ujjagar Singh on 14th January, 1971. However, the plaintiff was advised to pursue execution of the decree passed in the previous Suit No.367 of 1963 and was driven to file the present suit on 11th June, 1974 after the order was passed by the Executing Court on 2nd February, 1974. Nevertheless, as the decree sheet was prepared only on 19th August, 1972, the suit filed on 11th June, 1974 was within limitation in terms of Article 2(b) of the 1920 Act. To buttress this submission reliance has been placed on the decision in **Lala Balmukund (Dead) Through L.Rs. Vs. Lajwanti and Ors.**¹, wherein it has been held that “obtaining” the copy means drawing of a decree. That happened in this case on 19th August, 1972 and for which reason the suit filed on 11th June, 1974 was within limitation. Reliance has been placed on the contemporaneous record, including written statement and the appeal memo filed before the First Appellate Court by the respondents (defendants), admitting preparation of decree on 19th August, 1972. Reliance is also placed on Section 14 of the 1963 Act for exclusion of time during which Mohinder Singh (plaintiff) had bona fide pursued the execution proceedings. It is submitted that Section 14 of the 1963 Act will be attracted not only because of Section 29(2) of the 1963 Act, but also because of Section 5 of the 1920 Act expressly providing for application of Sections 4 to 25 of the 1963 Act. Reliance is placed on a three-Judge Bench decision of this Court in **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Ors.**,² which has enunciated that a liberal approach should be adopted by the Court, unless the application of Section 14 is expressly excluded by the special law. It is contended that although the first execution petition moved by the plaintiff

¹ (1975) 1 SCC 725

² (2008) 7 SCC 169

was dismissed as premature as also the subsequent execution petition was dismissed on 2nd February, 1974 on the ground that the proper remedy was to file a suit for possession, the defendants neither raised any objection nor challenged the said orders. On the other hand, the plaintiff acted upon the said orders and eventually filed a suit for possession on 11th June, 1974. Relying on the decision of this Court in *Union of India and Ors. Vs. West Coast Paper Mills Ltd. and Anr.*³, it is submitted that the conclusion reached by the Trial Court and commended to the First Appellate Court, is the correct approach in the fact situation of the present case. Taking any other view would be awarding bonus to the respondents despite Rura Singh (predecessor of respondents) having agreed for giving possession of the subject properties to Mohinder Singh (predecessor of the appellants) vide compromise decree dated 20th August, 1963.

11. The respondents, on the other hand, submitted that the High Court has justly reversed the concurrent judgment of two Courts on the issue of suit being barred by limitation after having found that the decree drawn on 19th August, 1972 on the basis of the compromise judgment dated 19th August, 1963 must relate back to the date of the judgment i.e. 19th August, 1963. Thus, mere preparation or drawing of a formal decree on 19th August, 1972 would be of no avail to the appellants as the limitation in the present case had commenced consequent to the death of Ujjagar Singh on 14th January, 1971 but the suit was filed on 11th June, 1974 after the expiry of 3 years' limitation period. It is submitted that the parties are governed by the provisions of Article 2(b) of the Schedule to the 1920 Act and the plaintiff failed to exercise due diligence for which reason cannot take advantage in calculating the limitation period from 19th August, 1972. It is contended that Section 14 of the 1963 Act was limited to accord protection to a litigant against the bar of limitation when he institutes civil proceeding, which by reason of some technical defects cannot be decided on merits and is dismissed. To buttress this submission, reliance has been placed on paragraphs 21, 22 and 31 in particular, of the decision in the case of *Consolidated Engineering Enterprises* (supra). According to the respondents, the subject suit was barred by limitation as it was not instituted within the limitation period specified in Article 2(b) of the Schedule to the 1920 Act and provisions of Section 14 will be of no avail to the plaintiff. Furthermore, no explanation or justification whatsoever has been offered by the plaintiff for the period

³ (2004) 3 SCC 458

A between 2nd February, 1974 (when the third execution petition was dismissed) and 11th June, 1974 (when the suit for possession was filed by the plaintiff). The question of showing any indulgence, much less by invoking Section 14 of the 1963 Act, does not arise. The respondents pray for dismissal of this appeal and affirmation of the view taken by the High Court whilst allowing the second appeal filed by them.

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12. We have heard Mr. Mahabir Singh, learned senior counsel appearing for the appellants and Mr. Manoj Swarup, learned counsel appearing for the respondents.

C 13. There is no dispute that the issue of suit being barred by limitation will have to be answered with reference to the special law as applicable i.e. the 1920 Act. The said Act was enacted to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointments of heirs by persons who follow custom in the area to which the Act would apply. Section 8 of the 1920 Act postulates that when any person obtains a decree declaring that an alienation of ancestral immovable property or appointment of an heir is not binding on him according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of an heir. For such a declaratory suit, the limitation is provided in the schedule. Article 2 of the Schedule also envisages that the period of limitation for a suit for possession of ancestral immovable property which has been alienated, on the ground that alienation is not binding on the plaintiff according to custom, *inter alia*, within three years from the date the declaratory decree is obtained. Section 8 of the 1920 Act reads thus:

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“8. **Benefit of declaratory decree.-** When any person obtains a decree declaring that an alienation of ancestral immoveable property or the appointment of an heir is not binding on him according to custom, the decree shall enure for the benefit of all persons entitled to impeach the alienation or the appointment of an heir.”

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Article 2 of the Schedule reads thus:

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SCHEDULE

Description of suit	Period of Limitation	Time from which period begins to run
1. xxx		
2. A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom-		
(a) If no declaratory decree of the nature referred to in Article 1 is obtained	6 Years	As above
(b) If such declaratory decree is obtained	3 years	The date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later.
3. xxx xxx xxx		
4. xxx xxx xxx		
5. xxx xxx xxx		
6. xxx xxx xxx		

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14. In the present case, the declaratory decree has been passed on 20th August, 1963 on the basis of the compromise between the plaintiff - Mohinder Singh (predecessor of the appellants) and defendant - Rura Singh (predecessor of the respondents). However, that being a conditional decree, the right to sue for possession would not have accrued until the death of Ujjagar Singh which happened only on 14th January, 1971. The appellants are not invoking the first part of Article 2(b), which postulates that the time from which period commences would be the date on which the right to sue accrues. First, because declaratory decree was passed on 20.8.1963; second, because it was a conditional decree and was unenforceable during the life time of Ujjagar Singh; third, because Ujjagar

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- A Singh died on 14th January, 1971 but the fresh suit was filed on 11th June, 1974 due to the observation made by the Executing Court in its order dated 2nd February, 1974. Resultantly, the appellants are relying on the second part of Article 2(b), which postulates that the time from which period would commence to file a suit for possession would be the date on which the “declaratory decree is obtained”.

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15. The substratum of the claim of the plaintiff is founded on the factum of date on which the decree sheet in respect of the compromise decree was prepared and drawn on 19th August, 1972. The expression “declaratory decree is obtained” would take within its fold the event of drawing of or preparation of the decree. Notably, the Trial Court as well as the Appellate Court has accepted the stand taken by the plaintiff that the compromise decree was prepared or drawn on 19th August, 1972. Even the High Court has not reversed that finding. The High Court, however, has held that drawing of a formal decree on 19th August, 1972 will be of no avail as it would relate back to the compromise decree passed on 20th August, 1963. That would not save the limitation period for filing the suit for possession. Whereas, the cause of action for filing such suit had arisen on 14th January, 1971 on the death of Ujjagar Singh but the suit was filed after the expiry of limitation period of three years on 11th June, 1974.

- E 16. In this backdrop, the moot question in the present case is the meaning of the expression “the declaratory decree is obtained”. Does it mean the date of pronouncement of the judgment i.e. 20th August, 1963 or the date of preparation of decree sheet i.e. 19th August, 1972? The expression “obtain”, as understood in common parlance and defined in Concise Oxford English Dictionary, would mean - “acquire, secure, have granted to one”. This may also encompass obtaining a copy of the decree. In central legislation, the expression is made explicit by providing “for obtaining a copy of the decree”, as was considered in *Lala Balmukund* (supra). The expression “obtained”, therefore, would pre-suppose, in the context of reckoning limitation period for filing a suit for possession, of securing a certified copy of the decree (decree-sheet) on the basis of which, the suit for possession could be instituted. In other words, the date on which the decree is drawn would be the relevant date for commencement of limitation period. As in the case of execution proceedings, mere passing of the judgment by the Court is not enough

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but a decree has to be drawn on the basis of such declaratory judgment which is then put into execution. Applying the same analogy, if a suit for possession is founded on a declaratory decree it could proceed only after a drawn up decree on the basis of a declaratory judgment of the Civil Court is made ready and obtained by the decree-holder. A

17. The expression “the declaratory decree is obtained”, therefore, assumes significance. If the legislature intended to provide it differently, it could have couched the provision as “the date on which the declaratory judgment is passed”. The legislature in enacting 1920 Act, however, consciously used the expression “the declaratory decree is obtained”, which intrinsically includes the date on which a formal decree is drawn or prepared and not merely the date on which a declaratory judgment is passed by the Court. Taking any other view would be rewriting the expression “the declaratory decree is obtained” and doing violence to the legislative intent. Besides, the expression “obtained” in Article 2(b) is prefixed by expression “is”; and further it follows with expression “whichever is later”. Even this would reinforce the position that the date on which the declaratory decree is drawn could ignite the period of limitation for instituting a suit for possession and not a mere declaratory judgment rendered by the Court in the previous suit (for declaration simplicitor). Taking any other view will render the last part of Article 2(b), providing for “whichever is later” nugatory and otiose. B C D E

18. The appellants have justly relied on the exposition in the case of *Lala Balmukund* (supra), (in particular paragraphs 20 and 21), which has answered similar issue regarding the date of obtaining decree and while explicating the term “obtaining a copy”, has held that the time will start only after the decree is drawn. It is apposite to reproduce the dictum in paragraph 19, which reads thus: F

“19. We do not wish to encumber this judgment with a detailed discussion of all the citations and the reasoning advanced therein in support of one or the other view. It will be sufficient to say that upon the language of Section 12(2) both the constructions are possible, but the one adopted by the majority of the courts, appears to be more consistent with justice and good sense. **The Limitation Act deprives or restricts the right of an aggrieved person to have recourse to legal remedy, and where its language** G

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- A is ambiguous, that construction should be preferred which preserves such remedy to the one which bars or defeats it. A court ought to avoid an interpretation upon a statute of limitation by implication or inference as may have a penalising effect unless it is driven to do so by the irresistible force of the language employed by the
- B Legislature.”

(emphasis supplied)

19. It may be useful to advert to the elucidation in *W.B. Essential Commodities Supply Corpn. Vs. Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.*⁴. Indeed, in that case the factual narrative on which the question was examined was somewhat different, namely, whether the period of limitation under Article 136 of the 1963 Act will start from the date of the decree or from the date when the decree is actually drawn up and signed by the Judge, as articulated in paragraph 2 of the judgment. In paragraph 12 of the judgment this Court observed thus:

- D “12. There may, however, be situations in which a decree may not be enforceable on the date it is passed. First, a case where a decree is not executable until the happening of a given contingency, for example, when a decree for recovery of possession of immovable property directs that it shall not be executed till the standing crop is harvested, in such a case time will not begin to run until harvesting of the crop and the decree becomes enforceable from that date and not from the date of the judgment/decreed. But where no extraneous event is to happen on the fulfillment of which alone the decree can be executed it is not a
- E conditional decree and is capable of execution from the very date it is passed (*Yeshwant Deorao v. Walchand Ramchand*⁵). Secondly, when there is a legislative bar for the execution of a decree then enforceability will commence when the bar ceases. Thirdly, in a suit for partition of immovable
- F properties after passing of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-
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⁴ (1999) 8 SCC 315

H ⁵ AIR 1951 SC 16

judicial stamp paper supplied by the parties within the time specified by the Court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in Shankar Balwant Lokhande v. Chandrakant Shankar Lokhande⁶ have to be understood. These observations do not apply to a money decree and, therefore, appellant can derive no benefit from them.”

(emphasis supplied)

20. As in the present case, even though the declaratory judgment was pronounced by the Court in the previous suit on 20th August, 1963, on the basis of compromise entered into by Mohinder Singh (original plaintiff) and Rura Singh (original defendant), that declaration could be given effect to only after the death of Ujjagar Singh. The decree as passed was enforceable only thereafter. Suffice it to observe that the decree sheet having been made ready on 19th August, 1972 and the suit for possession filed three years thereafter on 11th June, 1974, was thus within the prescribed period of limitation in terms of Article 2(b) of the Schedule to the 1920 Act.

21. Assuming for the sake of argument that the three years’ period provided in Article 2(b) ought to be reckoned from the date of death of Ujjagar Singh i.e. 14th January, 1971, the question would be whether the provisions of Section 14 of the 1963 Act would come to the aid of the plaintiff (appellants). The purport of Section 14 of the 1963 Act has been delineated in the case of *Union of India and Ors. Vs. West Coast Paper Mills Ltd.* (supra). The Court while considering the question as to whether the suit was barred by limitation examined the question whether Section 14 of the 1963 Act was applicable to that case. In paragraph 14 of the judgment, after referring to the decision in *CST Vs. Parson Tools and Plants* ⁷, this Court observed thus:

“14. In the submission of Mr. Malhotra, placing reliance on *CST v. Parson Tools and Plants*⁸, to attract the applicability of Section 14 of the Limitation Act, the following requirements must be specified: (SCC p.25, para 6)

‘6. (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

⁶ (1995) 3 SCC 413

⁷ (1975) 4 SCC 22

⁸ (1975) 4 SCC 22 : 1975 SCC (Tax) 185

- A (2) the prior proceedings had been prosecuted with due diligence and in good faith;
- (3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature;
- B (4) both the proceedings are proceedings in a Court.’
- B In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be ‘defect of jurisdiction or other cause of a like nature’ within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. **However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression ‘other cause of like nature’ came up for the consideration of this Court in Roshanlal Kuthalia v. R.B. Mohan Singh Oberai⁹ and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstances, legal or factual, which inhibits entertainment or consideration by the Court of the dispute on the merits comes within the scope of the Section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right.”**
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(emphasis supplied)

- G 22. The expanse of Section 14 of the Act, therefore, is not limited to mere jurisdictional issue but also other cause of a like nature. Taking cue from this decision, the appellant would contend that the plaintiff immediately after compromise judgment was pronounced on 20th August, 1963 took recourse to Execution Petition No.433/1964 on 23rd December, 1964 but the same was dismissed by the Executing Court on 7th August,

H ⁹(1975) 4 SCC 628

1965, as being premature. The plaintiff verily believed that the execution of the decree passed in the previous suit would result in getting possession of the property *albeit* after the death of Ujjagar Singh. Consequently, after the death of Ujjagar Singh on 14th January, 1971, the plaintiff moved second execution petition on 18th February, 1971 and in those proceedings moved an application for summoning the file with a decree sheet. It transpired that the decree was drawn and the decree sheet was made ready on 19th August, 1972, but the said execution petition stood dismissed for default on 2nd February, 1973. For that reason, the appellant on the same day moved the third execution petition i.e. on 2nd February, 1973 which, however, was dismissed on 2nd February, 1974 on the ground that the remedy for the plaintiff to get possession of the suit property was to file a suit for possession on the basis of the declaratory decree. It is only thereafter the plaintiff resorted to the subject suit, being Civil Suit No.173/1974 filed on 11th June, 1974.

23. Notably, the respondents did not question the decisions of the Executing Court – be it on the ground that it was premature or on the ground that the remedy for the plaintiff was to file a suit for possession. Indubitably, the proceedings such as execution petition resorted to by the plaintiff would be a civil proceeding. Further, the Trial Court as well as the Appellate Court have found that the plaintiff was pursuing that remedy in good faith. That finding has not been disturbed by the High Court. The reasons which weighed with the Executing Court for dismissing the execution petitions were just causes covered by the expression “defect of jurisdiction” and in any case, “other cause of a like nature”, ascribed by the Executing Court for its inability to grant relief of possession of suit property to the plaintiff. The fact situation of the present case would certainly satisfy the tests specified in Section 14 of the 1963 Act, for showing indulgence to the plaintiff to exclude the period during which the plaintiff pursued execution proceedings for reckoning the period of limitation for filing the suit for possession on 11th June, 1974. The argument of the respondents that the plaintiff did not offer any explanation for the period from 2nd February, 1974 till 11th June, 1974 does not impress us at all. That period is only of four months and once the period from 14th January, 1971 till 2nd February, 1974 was to be excluded as being time spent by the plaintiff in pursuing other civil proceedings in good faith, there would be no delay in filing of the suit.

- A What is posited by Section 14 of the 1963 Act is the exclusion of time of proceeding *bona fide* in Court without jurisdiction or other cause of a like nature, for which the concerned Court is unable to entertain the *lis*. The fact that no explanation whatsoever has been offered for the period from 2nd February, 1974 to 11th June, 1974, therefore, would not whittle down the rights of the plaintiff to institute and pursue suit for possession of the subject land on the basis of declaratory decree.

- B 24. That takes us to the last question as to whether Section 14 of the 1963 Act has any application to the case on hand. This issue need not detain us. Section 5 of the 1920 Act is explicit and it unambiguously postulates that the suit referred to in the First Schedule to the said Act would be governed by the provisions contained in Sections 4 to 25 (inclusive) of the Limitation Act. Section 5 of the 1920 Act reads thus:

- C **“5. Dismissal of suits of the descriptions specified in the Act if instituted after the period of limitation therein prescribed has expired.-** Subject to the provision contained in sections 4 to 25 (inclusive), of the Indian Limitation Act, 1908, and notwithstanding anything to the contrary contained in the first schedule of the said Act, every suit, of any description specified in the schedule annexed to this Act, instituted after the period of limitation prescribed therefor in the schedule shall be dismissed, although limitation has not been set up as a defence.”

E 25. It may be apposite to also advert to Section 29(2) of the 1963 Act, the same reads thus:

- F **“29. Savings.-** (1) xxx
- (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

- G (3) xxx
- H (4) xxx.”

26. We find force in the submission of the appellants that Section 14 of the 1963 Act would be attracted in the fact situation of the present case, in light of Section 5 of the 1920 Act and also Section 29(2) of the 1963 Act coupled with the fact that there is no express provision in the 1920 Act, to exclude the application of Section 14 of the 1963 Act. A

27. Both sides have relied on the exposition in the case of *Consolidated Engineering Enterprises* (supra). In that case, the Court noted that Section 14 of the 1963 Act envisages that it is a provision to afford protection to a litigant against bar of limitation when he institutes a proceeding which by reason of some technical defects cannot be decided on merits and is dismissed. While considering the provisions of Section 16 and its application, this Court observed that a proper approach will have to be adopted and the provisions will have to be interpreted so as to advance cause of action rather than abort the proceedings, inasmuch as the section is intended to provide relief against bar of limitation in cases of mistaken remedy or selection of a wrong forum. B C

28. It is not necessary to dilate on this judgment any further, having already observed that both the Trial Court and the Appellate Court were right in decreeing the suit in favour of the original plaintiff (predecessor of the appellants) by rejecting the objection regarding the suit being barred by limitation. The High Court committed manifest error in overturning the decisions of the Trial Court and the First Appellate Court, merely on the ground that the formal decree drawn on 19th August, 1972 on the basis of compromise judgment dated 20th August, 1963 must relate back to the date of the judgment i.e. 20th August, 1963 and would not arrest the limitation period until the preparation of the decree on 19th August, 1972. D E

29. In view of the above, we allow this appeal and set aside the impugned judgment and order and decree passed by the High Court and instead, restore the judgment and decree passed by the Trial Court as affirmed by the First Appellate Court. F

30. Accordingly, this appeal is allowed with no order as to costs. G