IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 16th OF APRIL, 2025

FIRST APPEAL NO.160/2018

SMT SUMITRA BAI ALIAS KALI BAI

VS.

SHRI RAMESH LODHI AND OTHERS

Appearance:

Appellant by Shri Sumit Raghuwanshi – Advocate.

Respondents No.1 to 3 by Shri Hussain Ali – Advocate.

Respondents No.5 and 6 by Shri Rohit Jain - Advocate.

Respondent No.7 by Shri L.A.S. Baghel – Government Advocate.

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Reserved on: 20.03.2025

Pronounced on: 16.04.2025

JUDGMENT

With the consent of learned counsel for the parties, the matter was finally heard on 20.03.2025 and today the judgment is being pronounced.

2. By the instant appeal filed under Section 96 of the Civil Procedure Code, the appellant-plaintiff is challenging the validity of the judgment and decree dated 18.12.2017 passed in Civil Suit No.1158-A/2014 by the District Judge, Bhopal.

3. A suit was filed by the plaintiff/appellant for declaration, partition, possession and permanent injunction. The trial Court dismissed the suit vide impugned judgment and decree mainly on the ground that the suit was barred by time and also observed that although the property was ancestral but the father of the plaintiff namely Motilal died before 09.09.2005 and as such on the date of death of her father, the plaintiff cannot be considered to be a co-sharer in the said property and as such, she did not have any right to claim share in the property and as per Section 6 of the amended Hindu Succession Act, she did not have any right over the property.

4. The challenge is made by learned counsel for the appellant mainly on the ground that in view of the facts and circumstances of the case and in the light of the law laid down by the Supreme Court in the case of **Vineeta Sharma v. Rakesh Sharma and others (2020) 9 SCC 1,** the finding given by the trial Court with regard to the right of the plaintiff/appellant is illegal and is not sustainable in the eyes of law.

5. Learned counsel for the appellant submitted that so far as the question of limitation is concerned, the limitation would be governed by Article 110 of the Limitation Act and as per this Article, the limitation is prescribed as 12 years from the date of knowledge of exclusion of the plaintiff's right in joint Hindu property, who has a share over the property. He submitted that as per the pleadings made in the plaint and other surrounding circumstances, which have not been taken note of by the court below, dismissing the suit on the ground of limitation is not proper which according to Shri Raghuwanshi was otherwise well within limitation and that finding is also not sustainable and as such, according to him, the trial Court has committed grave illegality in dismissing the suit instead of decreeing it. He further submitted that as per paragraphs 17 and 18 of the statement of PW-1 and the statement of DW-1, it can be determined that

the suit was well within the limitation and knowledge about exclusion of the plaintiff from the property in question was well within the limitation as has been prescribed in Article 110 of the Limitation Act.

6. E-converso, Shri Rohit Jain, learned counsel for respondents No.5 and 6 opposed the submissions of learned counsel for the appellant and supported the findings given by the court below mainly on the ground that as far as dismissing the suit on the ground of limitation is concerned, no illegality was committed by the court below and no interference by this Court is called for. He further submitted that in view of the cross-examination of plaintiff (PW-1) herself, it is clear that she had knowledge about her exclusion from the property in question and her right over the property had already been denied despite that she did not file the suit within the period of limitation, even if it can be considered that the same should have been filed within a period of 12 years from the date of knowledge. He has also relied upon the statement of PW-2 and according to paragraphs 38 and 39 of his statement, it is clear that the fact with regard to depriving the plaintiff was well within the knowledge of the plaintiff long back and despite that she did not raise any claim nor filed any suit. But the present suit filed by the plaintiff was beyond limitation and the trial court has rightly dismissed the suit on this ground. He further submitted that in view of the overall facts and circumstances of the case, it is clear that the suit would be governed by Section 27 of the Limitation Act and accordingly, the suit being apparently barred by time, has rightly been dismissed by the trial Court.

7. Learned counsel for respondents No.1 to 3 has supported the submissions made by learned counsel for respondents No.5 & 6 and added that the trial Court had rightly dismissed the suit as barred by time.

8. On the anvil of multifarious submissions made on behalf of the learned counsel for the parties, I find it apposite to frame certain

questions and by answering those questions it will navigate this Court in reaching to a definite conclusion, as under:-

(i) Whether the finding of the court below with regard to issue no.3 that the suit was barred by limitation, is based on unflinching reasons?

(ii) Whether, the finding of the court below that the plaintiff did not have any share over the property in question, is perverse?

9. To answer the above questions, it is imperative to engraft the factual matrix of the case, in a nutshell, as under:-

9.1 A suit was filed for partition, declaration of title and possession of property, which was owned and possessed by Late Motilal Lodhi during his life time and the said land was comprised in khasra No.1/1, 1/2, 3, total area 22.23 acres situated at Village Mubarakpur, Tehsil Huzur, District Bhopal. The plaintiff and defendants No.1 to 3 are siblings and defendant No.4 is nephew of plaintiff and son of defendant No.3. The plaintiff and defendants No.1 to 3 are children of Late Motilal and defendants No.5 and 6 are purchasers of the suit property.

9.2 The plaintiff claimed for declaration of sale-deed dated 26.05.2014 void which was entered into between defendants No.3 & 4 with defendants No.5 & 6 whereby the land belonging to khasra No.1/2/1 Patwari Halka No.24/1 total area 5.94 acre was sold.

9.3 As per the averments made in the plaint, the suit land is ancestral land which came in the ownership and possession of late Motilal, father of the plaintiff and defendants No.1 to 3. After the death of Motilal, defendants No.1 to 3 got their name recorded in the revenue record in respect of the suit property, but the name of the plaintiff was

not included as co-owner of the property. The plaintiff being the daughter and legal heir of Motilal, claimed right and title over the disputed land and filed the suit accordingly. The plaintiff claimed 1/4th share in the property and also sought relief of injunction restraining the defendants from further alienating the property.

9.4 Defendants No.1 to 4 filed their written-statement collectively and denied the averments made in the plaint taking a stand therein that the plaintiff is not their sister and after the death of their father late Motilal, the suit property came in their possession and their names are also recorded in the revenue record. It is also denied that the suit property is the ancestral property, rather took a stand that same got by their father as their grandmother Guliya Bai had received the same from her parental side and after the death of Guliya Bai, the property had devolved to Motilal, who was the only son of Guliya Bai and also raised objection about maintainability of suit saying that it is hopelessly barred by time.

9.5 Defendants No.5 and 6 also filed their written-statement denying the averments made in the plaint and also claimed that they are bona fide purchaser and after purchasing the property their names got recorded in the revenue record on the basis of sale-deed dated 26.05.2014. The trial court after recording the evidence of the parties vide judgment and decree dated 18.12.2017 dismissed the suit holding that the plaintiff did not have any coparcenary right over the ancestral land because father of the plaintiff died in the year 1984 and amendment in the Hindu Succession Act, 1956 came into force in the year 2005. Thus, the plaintiff is not entitled to get any benefit of said amendment as it has no retrospective effect and further held that the suit is barred by limitation as per Section 56 of the Limitation Act. However, the issue

with regard to the relation of plaintiff and the defendants was found proved by the court below.

10. As regards the issue decided by the court below about the limitation - the averments made in the plaint and evidence of the plaintiff recorded during the trial have to be taken note of. The trial court in paragraph 18 has dealt with the issue of limitation and observed that the mutation proceeding was done in the year 1987 in which the plaintiff was not shown having any share in the property and this was the first date of depriving the plaintiff. The court has also observed that in the statement of plaintiff in paragraph 8, she has admitted that since 1987, the defendants were cultivating the land. In paragraph 9 of his statement, she has admitted that she got married when she was aged 7-8 years and her son Govardhan (PW2) has also stated that when her mother demanded her right over the property, the defendants did not answer properly and then his mother had taken the certified copy of the revenue record and the copy was taken 29.06.1987, though the certified copy of the order of mutation was taken in the year 2014, but as per the statement of PW2, he and his mother came to know about the mutation came to him and his mother in the year 2007. In the statement of PW2 in paragraph 15, he has very clearly stated that "*Bhoomi ka namantran pratibadi ek se lagayat teen ke 1987 me hua tha, iski jankari mujhe aur meri maa ko nahi hai. Namantran ki jankari mujhe aur meri maa ko varsh 2007 me hui thi*". Likewise, PW1 – plaintiff in her statement in paragraph 15 has stated that she had knowledge that her brothers have been cultivating the land since 1987. She has also admitted that the land originally belonged to the father of her mother-in-law and later-on she has clarified that the land originally was owned by the father of her grandmother (Dadi). Thus, the court below has considered the statement

of the plaintiff witnesses and then observed that they had knowledge about the deprivation of their right over the suit land from 2007 and suit was filed in 2014 and also admitted that the some portion of the disputed land was sold out by the defendants 10-12 years back and they had knowledge about this fact since last more than 12-15 years. The court has therefore rightly observed that the plaintiff and her son were fully aware of the fact that since 1987, the disputed land is in occupation of the defendants and they have been cultivating the land and they also sold some portion of the disputed land, therefore, the cause of action according to the court below did not arise when the certified copy of the mutation record was obtained but from 1987, this fact was very much within the knowledge of the plaintiff. Thus, the finding given by the court below cannot be said to be perverse; conversely it is reasoned one and based upon the admission made by the plaintiff witnesses. The court below has further observed that the suit for declaration and possession had to be filed within the period of three years, the day when right to suit first accrued. I do not find any infirmity or perversity in the finding given by the court below about the limitation holding that the suit for declaration and possession was barred by time. Therefore, in my opinion the submission made by the learned counsel for the appellant is bereft of substance that the suit would be governed by Article 110 wherein limitation is 12 years for seeking declaration or for enforcing the right to share in the property from the date of exclusion of the plaintiff from the said right. Even otherwise, the facts as stated in the statement of plaintiff witnesses, it is clear that from 1987, she was aware of the fact that the land was being cultivated and claiming right over the property was not accepted by the defendants and son of the plaintiff has also accepted that they had knowledge that the portion of the disputed land was sold 10-12

years prior, meaning thereby, even if Article 110 is applied from the year 1987, the suit filed in the year 2014 is barred by time. From the statements of plaintiff witnesses including the plaintiff, it is clear that the plaintiff was fully aware of the fact that the disputed land was being used by the defendants and they were not providing any share in the said property to the plaintiff and she had knowledge about the sale of portion of disputed land, but cause of action shown in the plaint of the year 2014, does not mean that limitation should be counted from that date itself. The limitation is counted in the facts and circumstances of the case. When the issue is specifically framed with regard to limitation, the court has to consider the overall circumstances and determine the actual date of cause of action. In the case at hand, the court has rightly observed that as per the statement of plaintiff witnesses cause of action arose in 1987. The suit has not been filed even within the period of 12 years from the date of exclusion of the plaintiff's right over the suit property as in 1987 the land got recorded in the name of defendants and plaintiff was kept away from that mutation. As such, the suit was barred by time and it is rightly dismissed by the court below on the ground of limitation. The Supreme Court *in re* **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and others (2020) 7 SCC 366** has observed as under:-

> "**24**. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit."

Thus, question No.(i) framed by this Court is answered that the suit was rightly dismissed on the ground of limitation.

11. Albeit, the finding with regard to entitlement of the plaintiff claiming 1/4th share in the property was also decided by the trial court holding that the amendment having no retrospective effect and on the date i.e. 09.09.2005 when this amendment was brought into operation, the father of plaintiff was not alive and therefore she cannot be considered a coparcener. However, such a finding of the court below is not proper in view of the judgment passed by the Supreme Court in the case of **Vineeta Sharma** (supra) as per the observations made in paragraph 129 of the said judgment. Although, the respondents have not argued this aspect, but in my opinion, the finding given by the court below in respect of the right of the plaintiff over the property is not sustainable, therefore, it is set aside because the death of father of the plaintiff prior to date of amendment is immaterial and does not defeat the right of the plaintiff to get the share over the property but in view of the finding given by the court below about limitation and affirmed by this Court, the appeal in my opinion deserves to be dismissed as the suit filed by the plaintiff was rightly held by the court below as time barred.

Thus, the question No.(ii) framed by this Court is answered that the court below erred in arriving at a finding that the plaintiff was not having a coparcenary right over the disputed property.

12. In sum and substance, the appeal fails and is hereby dismissed.

(SANJAY DWIVEDI)
JUDGE

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