BALWANT SINGH AND ORS. A

v.

GURBACHAN SINGH AND ORS.

OCTOBER 15, 1992

[KULDIP SINGH AND N.M. KASLIWAL, JJ.] B

Limitation Act, 1963 :

Article 137—Excess land beyond terms of decree—In execution proceedings by mistake recorded by way of symbolical possession—Application for rectifying mistake and restitution—Date of commencement of limitation. C

In execution of a decree for pre-emption obtained by the respondent he was delivered actual possession as well as symbolic possession of lands. According to the decree, the respondent was only entitled to actual possession, and so far as the delivery of symbolic possession was concerned, it D **was beyond the terms of the decree.**

The father of the appellants having come to know about the aforesaid mistake, filed a suit for declaration and for permanent injunction in the year 1965, which was decreed in his favour, and the said E **declaratory decree was affirmed in appeal by the Additional District Judge on 12.5.1969, but the relief of injunction was denied as he was in actual possession of the portion over which symbolic possession was recorded in execution proceedings. This order became final.**

The respondent in the appeal filed a suit for partition in the year F **1973 claiming not only the lands in which he had obtained actual physical possession, but also the lands on which he was granted symbolic possession in the execution proceedings in 1963. After the filing of the suit for partition, the appellants filed an objection petition under sections 47, 151 and 152 of the Code of Civil Procedure praying that necessary correction** G **may be made in revenue record by restitution of excessive area wrongly delivered to the decree-holder. The respondent-decree-holder contested the application and one of the ground raised was that the objection petition was barred by limitation as the same was not filed within three years of the order dated 13.6.1963, under which symbolic possession was given to the decree-holder.** H

A The Sub-Judge held that the limitation will only start to run when the respondent-decree-holder tried to interfere in the possession of the petitioners by filing the partition proceedings in the year 1973. It was also held that the decree-holder had already obtained possession of the land to which he was entitled under the decree and he was not entitled to retain B the possession of the excessive area of which only symbolic possession was given to him.

Aggrieved by the aforesaid order, the decree-holder filed a revision before the High Court, and a Single Judge allowed the revision on the ground that the limitation in case of such applications was three years, C and the symbolic possession having been delivered on June 13, 1963, the application filed on July 22, 1973 was barred by time. It was further held, that actual possession of the land was never delivered by the Executing Court and it was only symbolical possession which was delivered, and for the purpose of restitution, if at all, there was a necessity to move the application, the same could be done within three years from the date of D the delivery of the symbolical possession. The order of the Executing Court was accordingly set aside, and the application filed by the judgment-debtor was dismissed.

In the appeal to this Court, on the question regarding the date from E which the period of limitation shall commence under Article 137 of the Limitation Act, 1963.

Allowing the appeal, this Court,

HELD : The period of limitation under Article 137 is three years F which commences from the date when the right to apply accrues. The question when such right to apply accrues will depend on the facts and circumstances of each case. [17-E]

In the instant case, in execution of the decree for pre-emption on 13.6.1963 the delivery of symbolic possession on an area measuring 62 G kanals, 13 marlas was wrongly recorded. The father of the appellants continued to remain in possession over the aforesaid land and he also filed a declaratory suit challenging the recording of the delivery of symbolical possession in favour of the decree-holder. The suit was decreed in his favour by the trial court and confirmed by the Additional District H Judge by order dated 12.5.1969. In 1973 the decree-holder filed the suit

for partition claiming the land on the basis of order dated 13.6.1963. An objection petition was submitted by the appellants in the Executing Court on 22.7.1973 for rectifying the mistake and for restitution of the land for which symbolical possession was wrongly recorded. The period of limitation under Article 137 would therefore commence when actual threat of dispossession commenced i.e. on taking the proceedings for partition in the year 1973. [17-F-H, 18-A] A B

The High Court was not right in holding that the limitation would commence from 13.6.1963 and not in 1973. [18-B]

This is a case where by mistake excess land beyond the terms of the decree was recorded by way of symbolical possession in execution proceedings. This fact is not disputed by the decree-holder. This error has been rightly corrected by the Executing Court on an objection petition filed under section 147 of the Code of Civil Procedure read with section 151. The judgment in the declaratory suit has also become final and binding on the decree-holder. It is not considered proper in the interest of justice to prolong this litigation by remanding the matter to the High Court. The judgment of the High Court dated 28.9.1978 is therefore set aside and the judgment of the Executing Court dated 19.2.1977 is restored. [18-C-D-F] C D

Merla Ramanna v. *Nallaparaju and Others,* [1955] 2 S.C.R. 938, relied on. E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2822 of 1979.

From the Judgment and Order dated 28.9.1978 of the Punjab and Haryana High Court in Civil Revision No. 480 of 1977. F

E.C. Agrawala for the Appellants.

Bishambar Lal Khanna and Ms. Geetanjali Mohan for the Respondents. G

The Judgment of the Court was delivered by

KASLIWAL, J. This appeal by grant of special leave is directed against the judgment of Punjab & Haryana High Court dated September 28, 1978. The short controversy raised in the present case is regarding the H

A date from which the period of limitation shall commence under Article 137 of the Limitation Act, 1963. According to the facts found established on record, Grubachan Singh-respondent was delivered actual possession of 135 kanals of land and symbolical possession of 62 kanals, 13 marlas on June 13, 1963 in execution of decree for pre-emption obtained by him. According to the decree, Gurbachan Singh was only entitled to actual possession of 135 kanals of land and so far as the delivery of symbolical possession was concerned, it was beyond the terms of the decree. Ladha Singh, father of the appellants having come to know about the said mistake, filed a suit for declaration and for permanent injunction in the year 1965. The said suit was decreed in favour of Ladha Singh and the said declaratory decree was affirmed in appeal by the Additional District Judge on 12.5.1969, but the relief of injunction was denied, as Ladha Singh was in actual possession of the portion over which symbolical possession was recorded in execution proceedings. It remains undisputed that the aforesaid judgment given by the Additional District Judge, Karnal dated 12.5.1969 became final.

Gurbachan Singh has now filed a suit for partition in the year 1973 claiming not only 135 kanals on which he had obtained actual physical possession, but also 62 kanals and 13 marlas on which he had been granted symbolical possession in the execution proceedings in 1963. After the filing of the suit for partition, the appellants filed an objection petition under Sections 47/152/151 of the Code of Civil Procedure praying that necessary correction may be made in revenue record by restitution of excessive area wrongly delivered to the decree-holder. The respondent – decree-holder contested the above application. Apart from the other objections, one of the ground raised was that the objection petition was barred by limitation as the same was not filed within three years of the order dated 13.6.1963 under which the symbolical possession was given to the decree holder. The Learned Sub-Judge First Class, Karnal held that the limitation will only start to run when the respondent – decree-holder tried to interfere in the possession of the petitioners by filing the partition proceedings in the year 1973. It was also held that the decree-holder had already obtained possession of the area measuring 135 kanals to which he was entitled under the decree and he was not entitled to retain the possession of the excessive area of 62 kanals, 13 marlas of which only symbolical possession was given to him. It was thus, held that the possession of the land measuring 62 kanals, 13 marlas of which symbolical possession was obtained was to be

restored in favour of the objector - judgment-debtor. A

Aggrieved against the aforesaid order, the decree-holder filed a revision before the High Court. Learned Single Judge allowed the revision on the ground that the limitation in case of such applications is three years and as the symbolical possession had been delivered on June 13, 1963, the present application filed on July 22, 1973 was barred by time. The High Court further held that actual possession of the land was never delivered by the Executing Court and it was only symbolical possession which was delivered. Thus, for the purpose of restitution, if at all, there was a necessity to move the application, the same could be done within three years from the date of the delivery of the symbolical possession. The High Court, as such allowed the revision and set aside the order of the Executing Court and dismissed the application filed by the judgment-debtor. B C

We have heard Learned Counsel for the parties and have gone through the record. It is not in dispute that Article 137 of the Limitation Act 1963 shall govern the present case. Article 137 reads as under: D

"137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues."

E

The period of limitation under Article 137 is three years which commences from the date when the right to apply accrues. The question when such right to apply accrues will depend on the facts and circumstances of each case. In the present case in execution of the decree for pre-emption on 13.6.1963, the delivery of symbolical possession on an area measuring 62 kanals, 13 marlas was wrongly recorded. Ladha Singh, father of the appellants continued to remain in possession over the aforesaid land and he also filed declaratory suit challenging the recording of the delivery of symbolical possession in favour of the decree-holder. The said declaratory suit was decreed in favour of Ladha Singh by the trial court and was affirmed by the Additional District Judge by order dated 12.5.1969. No relief for injunction was granted in view of the fact that Ladha Singh was in actual possession of the land. The decree-holder now in 1973 filed suit for partition claiming land on the basis of order dated 13.6.1963. The appellants as such submitted an objection petition under Sections 47/152/151 of the Code of Civil Procedure in the Executing Court on F G H

A 22.7.1973 for rectifying the mistake and for restitution of the land for which symbolical possession was wrongly recorded. In the aforesaid admitted facts, we are of the view that the period of limitation under Article 137 would commence when actual threat of dispossession commenced i.e. on taking the proceedings for partition in the year 1973. The High Court in
B our view was not right in holding that the limitation in the facts and circumstances of the present case would commence from 13.6.1963 and not in 1973.

Even otherwise, it is a case where by mistake excess land beyond the terms of the decree was recorded by way of symbolical possession in favour
C of the decree-holder in execution proceedings. This fact is not disputed by the decree-holder even in written arguments submitted before this court. This error has been rightly corrected by the Executing Court on an objection petition filed under Section 47 of the Code of Civil Procedure read with Section 151. Apart from that the judgment in the declaratory suit filed by Ladha Singh in this regard has also become final and binding on the
D decree-holder. We, therefore, do not consider it proper in the interest of justice to prolong this litigation by remanding the matter to the High Court as prayed in the alternative on behalf of the respondents.

We find support in the view taken by us on the decision of this Court
E in *Merla Ramanna* v. *Nallaparaju and others,* [1955] 2 S.C.R. 938, in which it was held that an application by a party to the suit to recover possession of properties which had been taken delivery of under a void execution sale would be in time under Article 181 (corresponding Article 137 of the Limitation Act, 1963), if it was filed within three years of dispossession.

F In the result, we allow this appeal, set aside the judgment of the High Court dated 28.9.1978 and restore the judgment of the Executing Court dated 19.2.1977. No order as to costs in the facts and circumstances of the case.

N.V.K. Appeal allowed.