

C. SUBMISSIONS

I. LIMITATION (ISSUE NO. 9 O.O.S. 3 OF 1989)

12. The issue of limitation has been decided against the Plaintiff-Appellant Nirmohi Akhara by Majority. Justice Sudhir Agarwal (while deciding the issue under Head (H) Page 1514-1516 Vol II) and Justice D.V. Sharma (at page __) have held that suit of the Nirmohi Akhara was barred by limitation applying Article 120, Justice S.U. Khan (Page 71-70 Vol 1) in his separate opinion has held the suit of the plaintiff to be within limitation.
13. The issue of limitation is required to be decided on the basis of the provisions of the Limitation Act, 1908 which was applicable at the time when the present suit was filed on 17.12.1959. Section 31(b) of the New Limitation Act, 1963 saves suits, appeals and applications filed and pending on the date of commencement of the Limitation Act, 1963 from the application of the said Act.
14. The following facts need to be taken into consideration for decision on the said issue:-
- (a) That the property which is the subject matter of the suit was placed under attachment under section 145 Cr. P. C, by an order dated 29.12.1949 and the receiver took possession of the property by a "supurdaginama" on 5.1.1950. The property was therefore *custodia legis* awaiting final decision of the Magistrate under section 145(2) of the Code. On 30.7.1953, the learned Magistrate passed the following order:-
- "the finding of the Civil Court will be binding on the Criminal Court it is no use starting proceedings in this case under Section 145 Cr.P.C. and recording evidence specially when a temporary injunction stands, as it can not be said that what may be the finding of this Court after recording the evidence of parties. From the administrative point of view the property is already under attachment and no breach of peace can occur.*
- I, therefore, order that the file under Section 145 Cr.P.C. be consigned to records as it is and will be taken out for proceedings further when the temporary injunction is vacated."*
- (b) The proceedings under section 145 Cr. P. C. Were pending even on the date when the suit was filed (i.e. on 15.12.1959) no final order had been passed holding one party or the other to be in possession of the property. Apart from the last portion of the aforesaid order, the fact that the proceedings under section 145 Cr. P. C remained pending is also evident from order dated 31.07.1954 passed on an application dated 22.07.1954 filed by Gopal Singh Visharad with a request that entire file of the case under Section 145 Cr.P.C. be preserved and not weeded out until such time as it was summoned by the Civil Court. The Magistrate passed the following order on 31.07.1954:

"This file can not be weeded as it is not a disposed of file...."

Thus it is evident that the proceedings under section 145 remained pending and were not disposed off.

- (c) In OOS No. 1 of 1989, an ad-Interim Order of attachment was passed on 16.1.1950 which was modified on 19.1.1950, continuing of the receiver appointed under S. 145 Cr. P. C and also allowing continuation of Puja. The said order was confirmed after hearing the parties 3.3.1951 (Page 3802 Vol III). The order was challenged by filing first appeal and was confirmed by an order dated 26.04.1955 in FAFO no. 154 of 1951 (page ____). Thus the order of attachment and appointment of receiver (though as an interim measure) attained finality only on 24.5.1955. The order dated 3.3.1951 stood merged in the order dated 24.5.1955.
- (d) The plaintiff - Nirmohi Akhara was not only claiming ownership and possession of the property i.e. the Main Temple or the Inner Courtyard but was also claiming to be the Manager (Shebiat) of "Janma Asthan" as well as the idols of Lord Ram Chandra, Laxmanji, Hanumanji and Saligramji. (See Para 2 and 3 of the Plaintiff)
- (e) The cause of action pleaded in the plaint is 5.1.1950 when the plaintiff Nirmohi Akhara was deprived of possession "by order of the Court" under section 145 Cr. P. C. Possession was deprived not by a adversarial defendant but by an order of court. On the principle - act of court prejudices no one, it cannot be said that the limitation could commence from the said date.

15. Submission on the Issue of Limitation

- (a) The relief prayed for by the plaintiff is for "restoration" possession and charge of the Main temple or the Inner Courtyard which was placed under a receiver appointed by the Magistrate in exercise of powers under section 145 Cr. P. Code, 1898 and which is also the cause of action pleaded in the suit. The suit would therefore be governed by Article 47 of the Schedule to the Limitation Act, 1908. The said article provides thus:-

"Art. 47: (Incorporated in Art. 65 of Limitation Act, 1963)

Description of Suit	Period of Limitation	Time from which period begins to run
By any person bound by <u>an order</u> respecting the <u>possession of immovable property made under the Code of Criminal Procedure, 1898</u> or the <u>Mamlatdar's Courts Act, 1906</u> , or by any one claiming under such person, to <u>recover</u> the <u>property</u> comprised in	Three years	The <u>date of the final order</u>

<u>such order.</u>		
--------------------	--	--

It is submitted that though the cause of action for the Plaintiff arose on 5.1.1950 when the plaintiff was deprived of possession of the property and placed in the hands of the receiver (defendant No. 1) appointed by the court, the limitation would begin to run only from "the date of final order". It is undisputed that no final order was actually passed and the S. 145 proceedings, which remained pending and as such the period of limitation did not begin to run against the Plaintiff.

- (b) ALTERNATE ANGLE - The Limitation Act creates a statutory bar on the right of a litigant of judicial redress "after" the period of limitation. The schedule to the limitation act has three columns. The first column "Description of suit" categorises the nature of suits, while a combination of the second and the third column determines the period "after" which a suit cannot be filed or if filed shall be dismissed. Thus a suit cannot be instituted "after the period prescribed". A suit, which can suitably be categorised in the language of the first column of an article of the schedule to the 1908 Act would continue to be governed by the said article alone and its categorisation would not be dependent on the words or phrases used in the third column. A reference to Section 3 of the Limitation Act would be useful at this stage which provide thus:-

3. Dismissal of suits, etc., instituted, etc., after period of limitation.- Subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence.

Explanation.- A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue as a pauper is made; and, in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

It is stated that a right to file a civil suit to remedy a civil wrong is governed by Section 9 of the Civil Procedure Code wherein any suit can be filed and considered by the courts "UNLESS BARRED".

9. Courts to try all civil suits unless barred— The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II]. For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.].

A suit can be said to be barred under section 3 of the Limitation Act or any other special law. The Limitation Act only bars suits filed "AFTER" the period prescribed but does not prevent suits from being instituted "BEFORE" the said period. Suits filed "BEFORE" the last point prescribed would naturally be "within limitation".

- (c) The "description of suit" under article 47 refers to "an order" respecting the possession of immovable property made under the Code of Criminal Procedure, 1898. The terms used in the first column is not "Final Order". Therefore the suit filed by the plaintiff Nirmohi Akhara for recovery of Management and Charge from the receiver appointed under under a preliminary order dated 29.12.1949 under section 145 of the Cr. P. C. 1908 would strictly fall under the "description of suit" mentioned in the First Column of Article 47. Second and the Third Column only prescribe the time "AFTER" which such a suit cannot be filed, it can always be filed "BEFORE" that date. Only thing to be considered is that there should be a "Cause of Action". It cannot be denied or disputed that the interim order of attachment and appointment of receiver did give rise to a cause of action to the plaintiff.

- (d) The Suit of the plaintiff is for restoration of the Shebiati Rights that have been impaired due to the order of attachment and appointment of a receiver. Shebiati Rights have been held to be a blend of a right in an office as well as proprietary right in the debuttar property.

(i) Angurbala Mullick Vs Debabrata Mullick, 1951 SCR 1125, 1132-1134

(ii) The Commissioner Hindu Religious Endowments Vs Shri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt 1954 SCR 1005, 1018-1019.

Mathedhipati = Manager

- (e) It is submitted that despite the order of attachment under 145 Cr. P. C dated 29.12.1949, as well as the interim orders passed in the Civil Suit OOS No. 1 of 1989, Seva Puja and Darshan was allowed to continue as before. Thus while possession of the property in its physical form became *custodia legis*, the right of management was not and cannot be *custodia legis* since the court expressly allowed it to continue as before. When the management was taken over on 5.1.1950, the receiver was allowing only two or three pundits to go inside and perform religious ceremonies and the general public was permitted to have Darshan only from beyond the Grill-Brick Wall. It is submitted that appointment of receiver therefore resulted in impairment in the "absolute" right of the plaintiff to do seva puja which, it is submitted would be dispossession to that extent of the shebiati right for which a suit can be brought for restoration in the time prescribed under Article 142. A suit

*Ready to
Shebiati rights
not null of the
was lawful in fact*

for restoration of shebiati rights would be a suit for recovery of possession of immovable property and would be governed by either Article 142 of the Limitation Act, 1908.

- (f) It is stated that since possession was taken upon an order of attachment and a receiver is appointed a suit could be filed for recovery of possession. Under Article 142, the period of limitation would commence from "the date of the property dispossession or discontinuance". It is stated that the property was put under attachment hence, while it may not be said that the plaintiff is not dispossessed from the "Physical Property" which is *custodia legis*, it can still be said that as a result of the order of attachment, the plaintiff from management of shebiati rights, hence Article 142 would be attracted. It is stated that from 5.1.1950 that shebiati possession stood impaired and a suit for recovery of possession filed on 17.12.1959 would be within 12 years prescribed therefor. Article 142 reads thus:-

Art. 142: (Correspondent to Art. 64 of Limitation Act, 1963)

For possession of immovable property when the plaintiff while in possession of the property <u>has been dispossessed</u> or <u>had discontinued the possession.</u>	Twelve years	The date of the property dispossession or discontinuance.
---	--------------	---



47
142
4023

- (g) Obstruction of prayer and worship has been held to be a continuing wrong (See *Hukum Chand Vs. Maharaj Bahadur*, AIR 1933 P.C. 193,197) and hence obstruction of the Plaintiffs right to manage the Bhog and Prayers independently by appointment of a receiver has been denied which is a continuing wrong under section 23 of the Limitation act 1908 and hence every obstruction provides a fresh cause of action and fresh starting point for the limitation.
- (h) In case the magistrate had passed a "Final Order" closing the proceedings under section 145 by deciding the case one way or the other and directing delivery of the property to anyone other than the plaintiff, it would result in "dispossession" and hence would give rise to a fresh cause of action under Article 142 and also under Article 47.
- (i) Since the property upon attachment by the order of the Magistrate had become *custodia-legis* i.e. in possession of the court, it is claimed that no suit for possession could be filed and only a suit for declaration of title was sufficient. It has been held by the majority judgment of the High Court that suit ought to have been filed within time prescribed under Article 120 of the Limitation Act, 1908. Article 120 is a residuary clause, as under the 1908 Act there was no separate specific articles governing Suits for Declarations, such suits would fall under under Article 120. The said article is reproduced below:-

Art. 120: (Correspondent to Art. 113 of Limitation Act, 1963)

Suits for which no period of limitation is provided elsewhere in this schedule.	Six years	When the right to sue accrues.
---	-----------	--------------------------------

It is stated that:-

- (i) The said article being a residuary clause has no application where a suit is governed by another specific clause. Since the case would be governed by Article 47 and 142, therefore Article 120 would have no application.
- (ii) Assuming Article 120 applies and a suit for declaration of title was required to be filed within the limitation prescribed under the said Article, since the order for appointment of receiver merged into the order of the civil court vide its interim order dated 19.1.1950 which was confirmed on 3.3.1951 and thereafter a final order in appeal against the order dated 3.3.1951 was passed on 24.5.1955, the period of 6 years ought to commence from the date of the order of the said appeal. The interim order of the Civil court "merged" in the order passed in the appeal and hence, suit filed by the Plaintiff on 15.12.1959 is within a period of 6 years from the order dated 24.5.1955 is within limitation.

On the merger and commencement of limitation:-

- (i) S.S. Rathore Vs State of M.P. (1989) 4 SCC 582
 - (ii) Chandi Prasad Vs Jagdish Prasad (2004) 8 SCC 724
 - (iii) Union of India Vs West Coast Paper Mills Ltd (2004) 2 SCC 747
 - (iv) Shanthi Vs T.D. Vishwanathan (2018) SCC Online SC 2196
 - (v) Surinder Pal Soni Vs Sohan Lal (2019) SCC Online SC 900
- (j) Since the property was attached and placed under a receiver, it is incumbent for the court to decide and adjudicate the issue of title and the suits cannot be dismissed as barred by Limitation. The property must revert to the rightful owner and cannot remain custodia legis for time *ad-indefinitum*. Hence in a suit for restoration of possession from a receiver, the question of limitation can never arise and such suits cannot never become barred by limitation so long as such property continues to be under a receiver at least of a person from whom possession was taken.

Hypothetical situation

In a case where a property is attached by a preliminary order under section 145(1) and none of the parties approach a civil court for a period of 3 years (period of limitation for a declaratory suit now under Article 58 is 3 years). A party approaches the court after three years and therefore as a result of a party approaching a civil court, s. 145

proceedings are dropped since continuation thereof would be an abuse of process. If the Civil Suit is dismissed on the ground of limitation, it would create an anomalous situation where the receiver, appointed or continued under an interim order which stand revoked due to dismissal of the suit, would continue to be in possession.

(k) Since the property is under the control of the receiver. A suit for Mesne Profits for incomes derived by the receiver can still be filed by the true owner and in such a suit, for which cause of action arises any benefit accrues would thus give rise to a continuous cause of action. While determining the issue of entitlement of mesne profits, the question of title will have to be adjudicated and upon adjudication possession will have to be delivered by the Receiver to the True Owner.

(i) Ellappa Naicken vs. Lakshmana Naicken A.I.R. 1949 Madras 71

(ii) Rajah of Venkatagiri v. Isakapalli Subbiah, ILR 26 Madras 410.

(l) The Plaintiff Nirmohi Akhara is a party defendant in Suit OOS No. 1 of 1989 in which interim order was passed and confirmed on 3.3.1951. The suit is in any case within limitation and hence the question of title can be decided even in the said suit. The issue of Limitation raised in OOS No. 3 of 1989 was therefore entirely unnecessary.

(m) The plaintiff - Nirmohi Akhara was not only claiming ownership and possession of the property i.e. the Main Temple or the Inner Courtyard but was also claiming to be the Manager (Shebiat) of "Janma Asthan" as well as the idols of Lord Ram Chandra, Laxmanji, Hanumanji and Saligramji. (See Para 2 and 3 of the Plaint). It is stated for the reasons which found favour with the court to hold that the suit OOS No. 5 of 1989 is within limitation that the deity was a perpetual minor, the suit of the Plaintiff Nirmohi Akhara cannot also be held to be barred by limitation.