



2026:CGHC:460

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 14.10.2025

Judgment Delivered on 05. 01 .2026

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SA No. 127 of 2005

Kariman (Died) Through LR:

1) Balram Rajwade S/o Late Kariman Aged About 58 Years R/o Village-Mayapur, Near Mahamaya Mandir, Ambikapur, Police Station And Tahsil Ambikapur District Surguja C.G.

... Appellant (s)

versus

Jainath (Died) Through LRs:

1 (A) - Bhagwati Rajwade Wd/o Late Jainath Aged About 75 Years

1 (B) - Shriram Rajwade S/o Late Jainath Aged About 58 Years

1 (C) - Shankar Rajwade S/o Late Jainath Aged About 50 Years

All above R/o Village- Mayapur, Near Mahamaya Mandir, Ambikapur, Police Station And Tahsil Ambikapur District Surguja C.G.

2 - State Of Chhattisgarh Through - Collector, Surguja, Ambikapur (C.G.)

... Respondent(s)

For Appellant (s) : Mr. Sandeep Patel, Advocate
For Resp No.1 (A) to 1 (C) : Mr. Aditya Kumar Mishra, Advocate
For State/Resp No.2 : Mr. Kalpesh Ruparel, Panel Lawyer

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

CAV Judgment

1. This second appeal is filed by appellant/defendant challenging impugned judgment and decree dated 29.01.2005 passed in Civil Appeal No.02-A/2003 by learned Second Additional District Judge, Ambikapur, District - Sarguja whereby learned first appellate Court set aside the judgment and decree passed by learned trial Court and decreed the suit in favour of plaintiff.
2. Facts relevant for disposal of this appeal are that original plaintiff/respondent No.1 filed a civil suit seeking declaration of title and possession of the suit property pleading therein that suit property is his ancestral property upon which defendant has forcefully taken possession and has encroached upon the same. In written statement, defendant therein has pleaded that suit filed by plaintiff is barred by limitation. They are in possession over the suit property since lifetime of their father and by virtue of adverse possession they became owner of suit property. It is also pleaded that plaintiff had filed an application for demarcation of suit property in which it was reported that defendant was in possession of suit property. Demarcation was conducted in the year 1984 however the suit is filed after more than 12 years of demarcation report and therefore suit for possession was barred by

limitation. It was also pleaded that there is non-joinder of necessary party. Other children of Bihari Ram (father of original plaintiff) were not impleaded as party to suit and therefore suit is not maintainable in its form. Learned trial Court upon considering pleadings made by respective parties and evidence brought on record has dismissed the suit holding it to be barred by limitation and further recorded a finding that there was non-joinder of necessary party. Judgment and decree passed by learned trial Court was put to challenge by plaintiff in appeal filed under Section 96 of CPC and learned appellate Court by impugned judgment and decree dated 29.01.2005 allowed the appeal recording a finding that suit was filed within time and further recorded a finding that in view of entry made in revenue record in the name of plaintiff of disputed property, plaintiff alone can file suit seeking declaration of title, possession and accordingly allowed the appeal and decreed the suit of plaintiff granting decree of possession and declaration of title and further awarded mesne profit.

3. Learned counsel for the appellant submits that learned first appellate Court erred in reversing both the findings of learned trial Court that suit was barred by limitation and further suit was not maintainable due to non-joinder of necessary party i.e. other siblings of plaintiff who on the date of filing of suit were alive. He contended that in the plaint, plaintiff himself has pleaded that plaintiff has filed an application for demarcation before Tahsildar which was registered as revenue proceeding and thereafter report was submitted on 11.07.1984 mentioning that at the time of demarcation defendant was found in possession of property recorded in name of plaintiff. On 11.07.1984

after preparation of report, plaintiff became aware of fact that defendant is in possession of suit property, though owned by him, however, he did not choose to file civil suit seeking possession of suit property within prescribed time i.e. 12 years . He also contended that learned first appellate Court taking into consideration that the application filed under Section 145 of Cr.P.C. before Sub Divisional Magistrate on 09.07.1985 came to be dismissed on 18.06.1997, computed period of limitation from that date i.e. 18.06.1997 which is erroneous. For computing limitation, period of exclusion is provided under Section 14 of the Limitation Act, 1963 (hereinafter referred to as " *Limitation Act*"), which does not provide for exclusion of period expired in contesting proceedings under Section 145 of Cr.P.C. and therefore learned first appellate Court erred in reversing finding of learned trial Court that suit was barred by limitation. He also contended that learned first appellate Court further erred in recording a finding that suit was maintainable at the instance of plaintiff only, excluding coparceners even after recording a finding that suit property was ancestral property of plaintiff.

4. Learned counsel for the State submits that State is a formal party and dispute is in between two private parties with regard to title and possession over the suit property.
5. I have heard learned counsel for the parties and also perused the record of trial Court.
6. This appeal was admitted for hearing on following substantial question of law:

"Whether the finding arrived at by the First Appellate

Court reversing the finding of the trial Court particularly on the question of limitation as well as on the issue of non-joinder of necessary party is proper or not."

7. So far as the first part of substantial question of law with regard to limitation is concerned, Article 65 of the Limitation Act provides for limitation for possession of immovable property or any interest therein based on title. Period prescribed is 12 years and time from which the period begins to run is also specifically mentioned as, when the possession of defendant becomes adverse to plaintiff. In case at hand plaintiff himself in para-7 of plaint has submitted that he moved an application before the Tahsildar for getting the suit land demarcated. On the application, pursuant to order of Tahsildar, demarcation was conducted and report Ex.P-3 was submitted on 11.07.1984. It was further pleaded that even after demarcation and its report mentioning that land on which defendant was found in possession was owned by plaintiff, defendant refused to vacate the suit property and handover possession to plaintiff. In para-5 of his cross-examination, plaintiff has further admitted that he submitted application for conducting demarcation of suit land. Though he stated that he was found in possession of the suit land on the date of demarcation, he further stated that defendant was found in possession of suit land since prior to date of demarcation.
8. From the aforementioned facts of the case, evidence of PW 1 plaintiff, it is apparent that plaintiff became aware of the fact that, on his land defendant is in possession, on 11.07.1984 and further defendant

refused to vacate and, therefore, according to provision under Article 65 of the Limitation Act time begin to run from the said date i.e. 11.07.1984. Period of 12 years of limitation for filing of suit for possession came to an end latest by 11.07.1996, however, the suit was filed only on 23.09.1997 i.e. after more than one year of lapsing period of filing of suit i.e. 12 years.

9. In view of specific pleading in the plaint and evidence of plaintiff, in the opinion of this Court, learned first appellate Court erred in reversing well reasoned finding of learned trial Court on the issue of limitation, by recording that period of limitation would start from the date of culmination of proceeding under Section 145 Cr.P.C., which in the opinion of this Court, is not sustainable in eyes of law.
10. Hon'ble Supreme Court in case of **Rajeev Gupta and Ors. Vs. Prashant Garg and Ors.** (2025 SCC OnLine SC 889), while considering the issue "whether the suit was barred by limitation" has observed thus:

"17. A coordinate Bench of this Court, in its decision of *Khatri Hotels (P) Ltd. v. Union of India*, examined the position under Article 120 of the Limitation Act, 1908 vis-à-vis Article 58 of the Limitation Act to observe that the right to sue would accrue when there was a clear and unequivocal threat of infringement of the plaintiff's right. However, while the former provision simply stated that the period of limitation commenced when the right to sue accrues, in a marked linguistic departure, the latter provision stated that the limitation would commence when the right to sue "first" accrued. Having observed so, this Court held that:

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

(emphasis supplied)

18. *Khatri Hotels (P) Ltd.* (supra) noticed the decision of a three-Judge Bench in *Rukhmabai v. Lala Laxminarayan* wherein the legal position was stated thus:

“34. The legal position may be briefly stated thus : The right to sue under Article 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

(emphasis supplied)

19. *Khatri Hotels Pvt. Ltd.* (supra) was noticed and applied by a bench of three-Judges in *Shakti Bhog Food Industries Ltd. v. Central Bank of India*, although in the context of Order VII Rule 11, CPC. It was held thus:

“17. The expression used in Article 113 of the 1963 Act is ‘when the right to sue accrues’, which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a

specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.

18. Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue 'first' accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded 'first' become known to him) and Article 104 (when the plaintiff is 'first' refused the enjoyment of the right). The view taken by the trial court, which commended to the first appellate court and the High Court in the second appeal, would inevitably entail in reading the expression in Article 113 as - when the right to sue (first) accrues. This would be rewriting of that provision and doing violence to the legislative intent. We must assume that Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression 'when the right to sue accrues' in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts."

20. *Shakti Bhog Food Industries Ltd.* (supra) also noticed the earlier three-Judge bench decision in *Union of India v. West Coast Paper Mills Ltd.* There, the distinction between Article 58 and Article 113 of the Limitation Act was noticed and delineated as under:

"21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when 'the right to sue first accrues', in terms of Article 113 thereof, the period of limitation would be counted from the date 'when the right to sue accrues'. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and,

thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose."

11. In the aforementioned decision, Hon'ble Supreme Court used words "right to sue accrues".
12. In case of **Laxman through LRs Vs. Gajanand and Anr.** (2019 SCC OnLine Chh 217), this Court has observed the provision under Section 14 of the Limitation Act, 1963 and concluded that Section 14 of the Limitation Act has no application whatsoever in respect of proceedings under Section 145/147 of Cr.P.C., therefore, in that view of matter this Court is of the considered opinion that plaintiff's suit was hopelessly barred by limitation, finding recorded by learned first appellate Court is patently illegal and perverse in law and therefore it cannot be sustained.
13. In case at hand also, according to provision under Article 65 of the Limitation Act, period began to run for plaintiff from the date when possession of defendant became adverse i.e. 11.07.1984. The Demarcation report Ex.P-3 was prepared mentioning that defendant is in possession of land owned by plaintiff and therefore 12 years period is to be computed from 11.07.1984 and not from the date of culminating of proceedings under Section 145 of Cr.P.C. i.e. 18.06.1997. Said finding recorded by learned first appellate Court is contrary to law and therefore it is not sustainable. Accordingly said finding is set aside.

14. In case at hand, original plaintiff- Jainath in pleadings of plaint has pleaded that original defendant No. 1-Kariman in the year 1984 under influence of villagers forcefully took possession of the land bearing kh. no.2289 measuring 0.057 hectares stating it to be his own land. When plaintiff objected to it, defendant No.1 along with help of villagers tried to assault him. It is also pleaded that on advice given by villagers he submitted an application for demarcation of the land before Tahsildar, based upon which demarcation was conducted on 11.07.1984 in Revenue Case No.14-A-83-84. It is also pleaded that upon demarcation held in front of plaintiff, defendant and other villagers, it became clear that the suit land was in the ownership of plaintiff but even then defendant No.1 refused to remove his possession from suit land.
15. Copy of demarcation report is placed in record as Ex.P-3 which is dated 11.07.1984. Plaintiff is examined as PW1. In Para-5 of his evidence, he admitted that when demarcation was done by Tahsildar, land was recorded in his name but in possession of defendant Kariman was found from prior date of demarcation. He also admitted that after demarcation, panchnama was also recorded . It is also admission of plaintiff that defendant refused to remove his possession from suit land and thereafter he filed application under Section 145 of Cr.P.C.
16. From the facts pleaded in plaint and evidence of plaintiff it is crystal clear that defendant was in possession of suit land much earlier to filing of an application for demarcation which was in the knowledge of plaintiff and therefore he submitted an application for demarcation. It is

also clear that after preparation of demarcation report and panchnama and getting knowledge of defendant being in possession of land, recorded in name of plaintiff, refused to handover possession of suit land to plaintiff. Refusal of leaving possession of land recorded in name of plaintiff, possession of defendant became adverse to plaintiff on the date of demarcation i.e. 11.07.1984. Plaintiff, immediately after getting knowledge of possession of defendant on his land pursuant to demarcation report dated 11.07.1984 and refusal of defendant to remove his possession from suit land, had not filed the suit for declaration of title and possession.

17. Article 58 of Limitation Act provides for limitation "*to obtain any other declaration*" and period of limitation is prescribed as "*three years*" and starting point of limitation is also specified as "*when the right to sue first accrues*". Plaintiff has not filed suit within three years from the date of demarcation of land.

18. Article 65 of the Limitation Act provides "*for possession of immovable property or any interest therein based on title*". Period of limitation is specified as "*twelve years*" and starting point of limitation is specified as "*when the possession of defendant becomes adverse to plaintiff*". As discussed in preceding paragraphs, plaintiff after getting knowledge that defendant No.1 was in possession of his land requested him to vacate his land to which he refused and thereafter the plaintiff submitted an application for demarcation before Tahsildar in the year 1984. Demarcation was conducted and report was submitted on 11.07.1984. Demarcation was done in presence of plaintiff, defendant

and other villagers as per pleading of plaintiff. Even if case of plaintiff is to be considered that before demarcation it was not clear as to whether the defendant was in forceful possession of land of plaintiff or not, but then on the date of demarcation, plaintiff became aware of the fact that defendant was in illegal and forceful possession of his land (suit land) on 11.07.1984. It is also case of plaintiff that after demarcation when he requested to defendant No.1 to vacate the land, he refused. Period of limitation so far as it relates to possession under Article 65 of the Act of 1963 would start running from date of demarcation made and it became adverse to plaintiff on the suit land and therefore the limitation so far as it relates to seek possession of suit property began to run from 11.07.1984 and according to provision under Article 65 of the Act of 1963 period of 12 years came to an end on 11.07.1996. Suit was filed only on 23.09.1997 i.e. after more than one year and two months of period of limitation of 12 years came to an end.

19. In the aforementioned facts of case as pleaded by plaintiff in the plaint and his evidence, demarcation report Ex.P-3 and provision of Article 65 of the Act of 1963 the suit filed by plaintiff for possession was beyond the period of limitation.
20. Learned first appellate Court has only considered the plea of adverse possession raised by defendant No.1 in his written statement and issue framed in this regard wherein learned trial Court had recorded a finding that defendant No.1 has perfected his title based on adverse possession, however, failed to consider that it is a suit filed by plaintiff

for possession and therefore the prime consideration would be whether the suit filed for possession was within the period of limitation and it is burden upon the plaintiff to prove the fact that suit was within limitation. However, learned trial Court escaped consideration of the provision under Article 65 of Limitation Act 1963.

21. Learned first appellate Court further recorded that proceeding under Section 145 of Cr.P.C. filed by plaintiff was dismissed on 18.06.1997 and therefore cause of action arose on that date, which in the opinion of this Court, is erroneous.

22. Provision under Section 145 of Cr.P.C. deals with "*procedure where dispute concerning land or water is likely to cause breach of peace*". Relevant portion of Section 145 of Cr.P.C. is extracted below for ready reference:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace- (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

X X X

x x x

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and , if possible decide whether and which of the parties, was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute;

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-Section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-Section (1)

x x x

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the land subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds, under the proviso to sub-Section (4), may restore to possession the party forcibly and wrongfully dispossessed."

x x x

x x x

23. From bare perusal of aforementioned provision it is apparent that in exercise of provision under Section 145 of Cr.P.C. title of parties to dispute is not to be decided but SDM in exercise of such powers only protects the possession and under proviso to sub-Section (4) of Section 145 Cr.P.C. the period of dispossession of applicant therein is also specified to be within 2 months next before the date on which report of police officers or other information was received.

24. In case at hand, in para-5 of pleading of plaint, plaintiff pleaded that in the year 1984 defendant forcefully took possession of suit land. In Ex.P-3 demarcation report placed mentioning that it is found that on suit land defendant No.1 has forcefully took possession about 2-3 years prior and is cultivating the land and possession is not recorded in revenue record. At the time of demarcation, plaintiff, defendant No.1 along with other villagers remained present. Ex.P-4 is the copy of order passed by SDM on 18.06.1997 in proceeding under Section 145 of Cr.P.C. SDM in the order, upon appreciation of evidence brought on record, has recorded that dispute arose from the date of demarcation when it is reported that the land in dispute is of the plaintiff. Witness examined on behalf of applicant therein/plaintiff have stated these facts. SDM taking note of proviso to sub-Section (4) of Section 145 of Cr.P.C. found that applicant therein i.e plaintiff was not in possession within 2 months next before the date of application. Plaintiff (PW1) in para-2 of his cross-examination has admitted that defendant No.1 had taken forceful possession since last about 15 years. He also admitted that possession of defendant No.1 over the suit land is prior to

demarcation.

25. From evidence of plaintiff, it is evident that possession of defendant No.1 on suit land was prior to date of demarcation. However, he has not specified the period and therefore even otherwise the proceedings of Section 145 of Cr.P.C. which was taken note of by the First Appellate Court for arriving at conclusion that suit was filed within time from the date or order of SDM under provision of Section 145 Cr.P.C., is no help of him, more so, when SDM has recorded a finding that the possession of non-applicant was much prior to 2 months from the date of information received by Magistrate and dismissed the application.
26. In the case at hand, when possession of defendant was crystallized in the proceedings of demarcation and defendant No.1 refused to handover possession of suit land, possession of defendant becomes adverse to plaintiff and therefore the period of limitation started to running from the date of demarcation i.e. 11.07.1984 and. Therefore. the suit filed by plaintiff for possession was barred by limitation under Article 65 of the Limitation Act.
27. Finding recorded by learned First Appellate Court that the suit was within limitation is perverse to evidence available on record and is also contrary to provision under Article 65 of the Limitation Act, and hence, it is not sustainable in the eyes of law. Accordingly, the said finding of learned First Appellate Court is set aside.
28. As this Court in discussions made in preceding paragraphs have held that suit filed by plaintiff is barred by limitation, therefore, consideration of the second part of question of law with regard to non-joinder of

necessary party, in the opinion of this Court, is not necessary.

29. In view of discussions made above, this appeal is allowed. Impugned judgment and decree passed by learned First Appellate Court is set aside and the judgment and decree passed by learned trial Court is affirmed.

30. Accordingly, question of law is decided.

31. No order as to cost.

32. Decree be drawn accordingly.

Sd/-

(Parth Prateem Sahu)
Judge

Praveen