
(1922) 01 MAD CK 0035
In the Madras High Court

Angati Parambath Kanniyalli Ratha

APPELLANT

Vs

Thekke Illath Neelakhanohan alias Padmanabhan Namboodry

RESPONDENT

Date of Decision : 06-01-1922

Acts Referred:

Limitation Act, 1963 — Article 120

Citation : AIR 1922 Mad 194 : 67 Ind. Cas. 600 : (1922) 15 LW 478

Hon'ble Judges : Kumaraswami Sastri, J;Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The plaintiff alleges that he is the jenmi of the plaint property and that he applied to have the land registered in his name in 19 7 and that, on the objection of the defendant, the Revenue Authorities refused to change the registry. He, therefore, sues for a declaration that he is the jenmi of the plaint land. Both the Courts dismissed the suit as being barred by limitation under Article 120. The plaintiff has preferred this second appeal.

2. It is found that the plaintiffs father applied in 1903 for change of revenue registry to his name and the Settlement Officer ordered that the registry should stand as it did. It is contended on his behalf that the suit is not barred by limitation as there was a fresh cause of action in 1917. He relies upon Brojendra Kishore Roy v. Bharat Chandra Roy [Abdul Razac] (1). The facts in that case were the plaintiffs claimed title to some property by purchase at a sale in execution of a mortgage-decree. They took possession but were resisted by the defendants and the property was attached u/s 146, Criminal Procedure Code. The order of the Magistrate was made on 25th April 1902. On the 3rd July and 11th October 1909 two sets of plaintiffs instituted suits for a declaration of their title and for their shares of the property. The Courts found that plaintiffs had title to the property and that they were in possession, till the attachment of the property by the Magistrate on 25th April 1902. The lower Appellate Court dismissed the suits as barred by limitation under Article 120 of the Limitation Act. The learned Judges held that the attachment by the Magistrate on account of the interference

of the defendants was a continuing wrong and that no question of limitation arose. In *Allah Jilai v. Umrao Husain* (2) the learned Judges held that the suit brought for profits of the share gave the plaintiffs a fresh cause of action. In *Kali Prasad Misir v. Harbans Misir* 50 Ind. Cas 767 : 17 A.L.J. 388 Piggott, J. observes: "My opinion is that the proceedings taken in the Partition Court whereby the plaintiffs found them selves, if their statements of facts are true, for the first time in danger of being actually dispossessed of their joint ownership over plot No. 655, give rise to a fresh cause of action altogether independent of any cause of action which may have been furnished to the plaintiffs by the Settlement entry made in 1.877." If, in this case, the respondents had attempted to disturb the plaintiff's possession or claim any right over the property to the derogation of the plaintiff's right, such an act would give a fresh cause of action. The plaintiff herein asks for the same relief which was denied to him in 1903. As observed in *Chowdhry Shamanund v. Rajnarain Das* 11 C.W.N. 186 : 4 C.L.J. 568, "it cannot be successfully maintained that the plaintiffs should as a matter of law be regarded as dispossessed merely by virtue of the order of the Revenue Authority s dismissing their application for registration. The suit is in substance, as it is in form, a suit for declaration of title and the rule of limitation applicable is that provided in Article 120 and not that in Article 144."

3. The case in *Anantarazu v. Narayanarazu* 13 Ind. Cas. 96 : 36 M. 383 : (1911) 2 M.W. N.531 : 10 M.L.T.04: 22 M.L.J. 108 has no application to the facts of the present case. There was an attachment of a person's land, as if it belonged to another, and on a later date the same was sold in Court auction. It was held that the plaintiff, no doubt, might then have sued, but we do not think they were bound to sue.... The owner's title is attached by a sale in an altogether different and greater degree than it is by an attachment. We think this gives the owner of the property a fresh cause of action."

4. In the present case it cannot be contended that there was a fresh cause of action in 1917. The plaintiff's father was refused change of registry to his name in 1903. The plaintiff again applied in 1917 for the same relief which was refused. The suit brought after six years from the date of first refusal is barred under Article 120 of the Limitation Act, vide *Akbar Khan v. Turaban* 1 Ind. Cas. 557 : 31 A. 9; A.W.N. (1908) 252 : 5 A.L.J. 637 : 4 M.L.T. 444.

5. It is next contended that the respondent did not deny the plaintiff's title in 1903 and that he denied plaintiff's title only in 1917. The facts in evidence do not support this contention. Operations under the Malabar Land Registration Act, 1896, went on in 1901 and 1902 and under Sections 4 and 5, notices must have been issued, and such enquiry as was necessary must have been held u/s 6.

6. The records of the operations seem to have been destroyed and it would be putting a premium upon perjury to allow the parties to adduce oral evidence as to what happened in 1903. It is clear from Exhibit VII that plaintiff's father must have been aware of what was going on then and after the entry was made in defendant's name he wanted a transfer to his name which was refused by the

Settlement Officer; vide Exhibit VII.

7. It is next contended that the plaintiff has been in undisturbed possession for the last twelve years and that he is, therefore, entitled to bring a suit for declaration of his title against the defendant, In the first place there is no evidence as to the nature of his possession. Even if he is in possession as a jenmi that would not by itself give a cause of action against the defendant.

8. It is further contended that every fresh denial of title gives a fresh cause of action and Bhaiaji [Jalandhar Thakur v. Jharula. Das 24 Ind. Cas. 504 : 42 C. 244 : 1 L.W. 549 : 18 C.W.N. 1029 : 27 M.L.J. 100 : 16 M.L.T. 20 : (1914) M.W.N. 636 : 12 A.L.J. 1176 : 20 C.L.J. 360 : 16 Bom. L.R. 845 in cited to support it. In that case their Lordships held "that on each occasion on which Jharula Das received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled Jharula Das committed a fresh actionable wrong in respect of which a suit could be brought, against him by the shebait." If, in the present case, the defendants attempted to collect or collected the income of the land, the plaintiff would have had a fresh cause of action. By asking for this identical relief in 1917, which was denied his father in 1903, the plaintiff does not acquire a fresh cause of action against the defendants. The second appeal fails and is dismissed with costs.

Kumaraswami Sastri, J.

9. I agree.