
(1941) 11 BOM CK 0011

In the Bombay High Court

Case No : Letters Patent Appeal No. 12, 13 and 14 of 1938

Balkrishna Khanderao Nyayadhisha

APPELLANT

Vs

Anant Abaji Inamdar

RESPONDENT

Date of Decision : 13-11-1941

Acts Referred:

Limitation Act, 1908 — Article 131, 28

Citation : (1942) 44 BOMLR 288

Hon'ble Judges : N.J. Wadia, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—These are appeals under the Letters Patent against the decision of Mr. Justice Macklin in three Second Appeals, in which there was only one judgment. The plaintiffs are the holders of certain lands and the defendants are the superior holders to whom assessment is payable. Prior to 1875 the assessment was Rs. 119-14-0. It was increased in 1875 to Rs. 185-8-0, and there have been two subsequent enhancements, the details of which it is not necessary to give. In 1889 higher assessment as enhanced from 1875, which up to that time had not been paid, was demanded and refused, and the superior holders approached the revenue authorities for assistance u/s 85 of the Land Revenue Code, but that assistance was refused. Subsequently, in 1920, enhanced assessment was recovered through revenue authorities and these suits were filed asking for a declaration that the defendants are not entitled to recover the enhanced assessment and for recovery of the amount paid in enhanced assessment through revenue authorities. The trial Judge dismissed the plaintiffs' suits. In appeal the Assistant Judge decreed the suits. In second appeals in the first instance Mr. Justice Macklin sent down to the lower Court two issues (1) Do the plaintiffs prove that they are entitled to hold the land free of assessment? (2) If not, do they prove that the defendants are not entitled to recover from them; the assessment as enhanced by the Government, either because the defendants

never had any such right or because they have lost it by limitation or otherwise ? The first issue was answered by the lower Court in the negative. The second issue was answered in these terms : " The defendants have lost their right to enhance the assessment by limitation and operation of Section 28 of the Indian Limitation Act, and adverse possession of the plaintiffs." The matter then again came before Mr. Justice Macklin who disagreed with the finding on the second issue and allowed the appeals and dismissed the plaintiffs' suits. The question is whether that decision is right.

2. The plaintiffs contend that a suit to recover assessment is a suit to establish a periodically recurring right within Article 131 of the Indian Limitation Act and that it is barred twelve years from the time when the plaintiffs were first refused the enjoyment of the right, and it is said that they were refused such enjoyment in the year 1889. I will assume that Article 131 applies to a case of this sort, a proposition to which the cases of Ganesh Vinayak Joshi Vs. Sitabai Narayan Joshi, and Shri Bala Maharaj Vs. Sakharam Venkatesh Joshi, afford some support. But to bring the case under Article 131 does not help the plaintiffs because the defendants are not suing to recover the assessment. The plaintiffs must go further and say that not only is the recovery barred, but the right to recover assessment has ceased to exist u/s 28 of the Indian Limitation Act. That section provides that at the determination of the period limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. I entirely agree with Mr. Justice Macklin in thinking that although a right to assessment may for certain purposes be regarded as Immovable property, it is quite impossible to say that a suit to recover assessment is a suit for possession of any property. A right to recover assessment is a mere right in action, what in English law is called a " chose in action", and if the Court made an order for recovery of possession of such a right, it would be impossible to enforce the order, because nobody could be put in possession of an intangible right of that sort. But reliance is placed on a decision of this Court in Sakhmam v. Trimbakrao (1920) 23 Bom. L.R. 314 and the learned Assistant Judge based his decision largely on that case. The plaintiff in that case was suing to recover a sum alleged to have been wrongfully recovered from him by the defendant as assessment on certain lands, and the Court held that by virtue of a certain grant the assessment was not leviable and the plaintiff was entitled to a decree. That really disposed of the case, but Mr. Justice Crump, who gave the leading judgment, went on to consider the effect of the law of limitation on the plaintiff's claim. After expressing the opinion that it was necessary to consider the effect upon the right to levy assessment of Section 28 of the Indian Limitation Act, he says :

If a suit of the nature described, that is to say, a suit to levy assessment on rent-free lands is a suit for possession of property within the meaning of that section, the effect of the failure to institute such a suit within the time allowed would be the extinguishment of the right to levy the assessment." Then he holds that such a suit is a suit to: recover possession relying on a passage in a judgment of the

Calcutta High Court reported in *Abhoy Churn Pal v. Rally Pershad Chatterjee* (1880) ILR 5 Cal. 949 in the following terms : " A suit for rent is, I think, a suit for the possession of property within the meaning of that section." do not know what the sentence was intended to mean in the context in which it appeared, but taken by itself it seems to me to propound a proposition which is manifestly wrong. A suit for rent is a suit for rent in the form in which it is (payable, which is generally in money, but may be in kind. It is certainly not a suit for possession of specific property, and I think that Mr. Justice Crump was quite wrong in holding, in reliance on that dictum, that a suit to levy assessment of rent-free land is a suit for possession of property within the meaning of Section 28 of the Indian Limitation Act. Unless the plaintiffs can bring themselves" within Section 28 they must fail because the defendants are not taking any proceedings in a civil Court to which Article 131 can be pleaded as a defence. In my opinion the decision of Mr. Justice Macklin that the plaintiffs have failed to establish their case u/s 28 is right. That being so, it is not necessary to consider the further point as to whether the plaintiffs' suits were barred by the Revenue Jurisdiction Act. The appeals must be dismissed with costs.

N.J. Wadia, J.—I agree.