
(1907) 07 AHC CK 0017
In the Allahabad High Court

Banwari Lal and Others

APPELLANT

Vs

Musammat Gopi

RESPONDENT

Date of Decision : 20-07-1907

Acts Referred:

Citation : (1908) ILR (All) 44

Hon'ble Judges : Dillon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dillon, J.—The suit out of which this appeal has arisen was brought by the plaintiffs appellants for a declaration that they are the owners in possession of the groves Nos. 2806 and 2814 situated in mauza Bithri. The facts of the case are as follows: One Manick Chand, ancestor of the defendant respondent, instituted a suit against the plaintiffs in the Revenue Court for arrears of rent in respect of these groves. In that suit the present plaintiffs, who were then defendants, pleaded that they had proprietary rights in the grove in question. Thereupon the Revenue Court passed an order on the 13th of November 1903, u/s 199, Clause (a) of Act No. II of 1901", requiring them to institute a suit within three months in the Civil Court for the determination of such question of title. They accordingly instituted a suit in the Civil Court, which was decided against them on the 13th of May 1904. They appealed on the 20th of June 1904, but withdrew the appeal with leave to bring a fresh suit on the 5th of September 1904. Before the appeal was filed, the Revenue Court, presumably following the decision of the Munsif, dated 13th May 1904, gave an ex parte decree for rent against them on the 11th of June 1904. The plaintiffs have now brought present suit on the 29th of March 1905, sixteen months after passing of the Revenue Court's order, referring them to the Civil Court, and the question is whether such a suit is maintainable. The lower appellate Court has held that it is not, inasmuch as it was instituted beyond the period of three months allowed by the order of the Revenue Court, dated 13th November 1903 and has dismissed the plaintiffs"

suit. For the appellants it was ably argued by Dr. Satish Chandra Banerji that the suit was not barred by the special period of limitation provided by Section 199 of Act No. II of 1901, and that under Article 120 of Schedule II of the Limitation Act, No. XV of 1877, it could be brought at any time within six years from the date when the cause of action accrued to the plaintiff. It was further argued that the decision of the Revenue Court, dated 11th June 1904, in the rent suit did not finally decide the question of title, and that it does not therefore bar the present suit. For the defendant respondent it was contended that the suit was barred by the special period of limitation provided by Section 199 and also by the decision of the Revenue Court, dated 11th June 1904, decreeing the suit for rent. I shall first proceed to consider and decide the question whether or not the limitation provided by Section 199 of Act No. II of 1901 overrides the longer period of limitation, namely, six years, provided by Article 120 of Schedule II of Act No. XV of 1877. In my opinion when an order u/s 199 of Act No. II of 1901 is passed by a Revenue Court directing the defendants to file a suit in a Civil Court within the time limited by that section the ordinary period of limitation is thereupon suspended and the special period provided by the Tenancy Act is substituted. There would be no meaning in the Legislature having provided a special period of limitation by Section 199 if it were possible for the party affected by the order under that section to bring a suit at any time within the ordinary period of limitation. There is no authority on the point, or at least none has been cited, and it seems to me that the view taken by the Court below is the only reasonable view. It is clear that the effect of the withdrawal by the plaintiffs of their former suit is the same as if they had never brought such a suit. They have, therefore, entirely failed to obey the order of 13th November 1903 which directed them to file a suit in a Civil Court within three months from the date of such order, and the present suit is therefore barred. I accordingly decide this point against the plaintiffs appellants. In this view it is unnecessary to decide the second question as to whether or not the decision by the Revenue Court in the rent case bars the present suit. The appeal therefore fails and is dismissed with costs.