
(1894) 03 CAL CK 0001
In the Calcutta High Court

Bejoy Chand Mahatab Bahadur	Vs	APPELLANT
Kristo Mohini Dasi and Another		RESPONDENT

Date of Decision : 05-03-1894

Acts Referred:

Limitation Act, 1963 — Article 14

Citation : (1894) ILR (Cal) 626

Hon'ble Judges : Trevelyan, J; Rampini, J

Bench : Division Bench

Judgement

Trevelyan, J.—The real question in this case is one of limitation. This question depends upon whether Article 14 * of the second schedule of the Limitation Act applies, and, if it does so apply, from what date limitation begins to run.

2. The land in dispute in this suit was chrtukidari, chakran land situate within the estate of which one of the former Maharajahs of Burdwan was the proprietor. In 1882, proceedings, purporting to be u/s 48 and the following sections of Bengal Act VI of 1870, were commenced.

3. The Maharajah contested the assessment, and on the 8th of July 1882 by a petition asked the Collector to settle the land with him. On the 8th of July 1832, the Collector refused this application, and ordered the land to be settled with the first defendant, who was the zemindar of adjacent lands. A transfer in the form of Schedule C of the Act was drawn up and signed by the Collector, but did not issue from his office.

4. The Maharajah then preferred an appeal to the Commissioner of the division, who set the order of the Collector aside on the 1st of September 1882.

5. I may say in passing that apparently this order of the Commissioner was ultra vires, and indeed the learned pleader for the appellant has not very seriously contended that it was intra vires. The powers of the Commissioner under the Act are defined by Section 64, which provides as follows: "The Commissioner of circuit shall have a general controlling power over all proceedings of panchayats

and Magistrates and Magistrates of districts under this Act." Section 1 of the Act defines the "Magistrate of the district" as "the Chief Officer charged with the executive administration of a district in criminal matters by whatsoever designation such officer is called." So apparently the Commissioner can only control the action of the Magistrate when he is acting in his capacity as administrator of a district in criminal matters. He was here acting as Collector, i.e., as administrator of the district in revenue matters. In the view that I take of this case it is not absolutely necessary to determine whether the order of the Commissioner was valid, but as far as I can see it was not. If it were valid there is an additional reason for this suit not being barred.

6. As far as I can gather proceedings to resume chakran land seem then to have been kept in abeyance for about five years. In the 12th paragraph of the plaint the plaintiff says: "This plaintiff has come to learn and believes that after the said order had been passed the question of resumption of chakran land was kept in abeyance for some time under orders from Government." The defendants did not deny this in their written statement. A similar statement was made before us and was not contradicted. While these proceedings were in suspense the Maharajah died, leaving an infant widow, who, while still an infant, adopted the present plaintiff, who also was and is still an infant. On the 17th of June 1887, the Maharani, who apparently had not then adopted, applied to the Collector for a deed of transfer. This application was refused on the next day.

7. On the 8th of August 1887, the defendant No. 1 applied to the Collector to issue to her the deed of transfer which had been signed in 1882. By an order of the 17th of August it was ordered to be so issued.

8. On this state of facts I have come to the conclusion that it is not necessary to sue to set aside the order of the Collector made in 1882.

9. The limitation provided in Article 14 only applies where it is necessary to set aside an order before relief can be obtained. The order of the Collector was, in my opinion, clearly ultra vires. He had not under the Act any power to transfer the land to any one except the Maharajah.

10. Section 48 says that the land shall be transferred in manner and subject as thereafter mentioned (i.e., as to the fixing of the assessment) to the zemindar of the estate or tenure within which may be situate such land. There is no power whatever to transfer to any one else, and any such transfer would necessarily be an entire nullity. The Collector has no more power to transfer this land to any one other than the zemindar than any private individual has.

11. It is not necessary to sue to set aside an order which is an absolute nullity. Such order can be treated as of no effect whatever. If authority were wanted for such a proposition it can be found in the cases of Shivaji Yes ji Chawan v. The Collector of Ratnagiri ILR 11 Bom. 429 and Nagu v. Salu ILR 15 Bom. 424.

12. In the former case at page 432 of the report, Mr. Justice West, with the

concurrence of Mr. Justice Birdwood, says: "There are other orders not within the scope of the authority of the official who makes them *ratione materiae*. He affects to deal with something in its nature or legal character beyond the range of his functions. In the case of such an order carried out in the way of dispossession, we do not think that the person injured is deprived of his remedy, or restricted in his resort to the Law Courts, merely by the orders being signed by the Collector or other official. The order is, in the case supposed, legally a nullity; the dispossession is an act of force as if it had been effected by a mere private individual." In the latter case Mr. Justice JARDINE approves of Mr. Justice WEST'S decision, and Mr. Justice Candy, who, on other grounds, differed from Mr. Justice Jardine as to the particular case before them, says: "Had the order passed by him not been *prima facie* within the scope of his authority, *ratione materiae*, then Section 135 would not apply. So, too, had he affected to deal with something in its nature or legal character beyond the range of his functions, his order would have been legally a nullity, and there would have been no need for plaintiff to bring a suit to set it aside." It is clear from Mr. Justice Bayley'S judgment in the same case that he approves of this proposition.

13. In the present case, I think that the order of the Collector in 1882 can be treated as an absolute nullity, and that it neither bars nor restricts the plaintiff's right of suit.

14. Had I come to the conclusion that Article 14 of the Limitation Act applied to this suit, I think I must have held that time began to run, not from the order of 1682, but from the issue of the transfer in 1887. The proceedings were in abeyance, and if the Maharaja had then sued to set aside the order of 1882 the answer would probably have been that, until he had issued the transfer, there was nothing to prevent the Collector cancelling it. The proceedings of 1887 show that another order was under the circumstances necessary before it would be issued. The proceedings of 1887 were in continuation of those of 1882, and show that the proceedings of 1882 had not terminated by a final order.

15. In my opinion this appeal should be allowed and the decree of the Munsif restored with costs in the Lower Appellate Court and in this Court.

Rampipi, J.

16. I agree. I would add that if the order of the Collector dated 1882 be held to be a good order, then it must be regarded as set aside by the order of the Commissioner. Both orders seem to me to stand on the same footing as regards jurisdiction. In that case, the suit is not barred by limitation; for limitation would not begin to run till 1887, and the plaintiff's adoptive mother having been a minor, and the plaintiff being himself still a minor, the suit is in time. If, on the other hand, it be held that the Commissioner's order is void for want of jurisdiction, then the Collector's order of 1882 must be regarded as inoperative for the same reason. I can make no distinction between the two orders as regards validity.

17. I therefore concur in allowing this appeal with costs.

* [Article 14:- -----
----- Description of suit. Period of Time from which
period begins limitation. to run. -----
----- To set aside act or order of an
One year ? The date of the act or order.] Officer of Government in his official
Capacity, not herein otherwise Expressly provided for. -----
