
(1939) 02 PAT CK 0011
In the Patna High Court

Gadadhar Patra and Others

APPELLANT

Vs

Bholanath Chaudhury and Others

RESPONDENT

Date of Decision : 15-02-1939

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 94
Limitation Act, 1963 — Article 93, 2(8)

Citation : AIR 1939 Patna 548

Hon'ble Judges : Dhavle, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—This appeal arises out of a suit for a declaratory decree, the declaration sought being that it may be held that the deed alleged to have been executed by Hriday and Bhabani Mahapatra on 25th Jaistha 1226, B.S. on a plain paper as disclosed by the defendants is wholly false, that the jote included in Khata No. 176 in the names of the defendants is not held in mukarrari right and that the rent of the said jote is liable to enhancement.

2. The plaintiff is a purchaser of an intermediate tenure at a rent sale and the defendants are occupancy raiyats of a holding bearing Khata No. 176 under that tenure. The rent sale at which the plaintiff purchased the tenure was held on 2nd September 1929, in execution of a decree obtained by the superior landlords who are patnidars against the intermediate tenure-holders. The plaintiff's case is that after purchasing the tenure he discovered that in the last Record of Rights which was finally published on 4th July 1921, the defendants were recorded in Khata No. 176 as holding a mukarrari right on a fixed rent of Rs. 4, by virtue of a deed executed on 25th Jaistha 1226, B.S. by Hriday and Bhabani Mahapatra. The plaintiff challenges the genuineness of that deed and also the correctness of the entry in the Record of Rights. The suit was contested on the grounds inter alia that the said deed is genuine and was executed by the then patnidars Hriday and Bhabani Mahapatra, that the under tenure which the plaintiff claims to have purchased had no real existence at all but was merely created on paper with an ulterior object, that the rent sale was invalid and that the suit is barred by

limitation. The learned Subordinate Judge who tried the suit decreed it, and on appeal, his decision has been affirmed by the learned District Judge. The defendants have preferred this second appeal. Both the Courts below have found that the deed dated 25th Jaistha 1226, B.S. is not genuine and that the plaintiff's purchase at the rent sale is valid. These findings have not been seriously challenged in this appeal, and as findings of fact, they must stand.

3. The only question urged in this appeal is that of limitation. It is contended that so far as the prayer for declaration that the deed dated 25th Jaistha 1226, is not genuine is concerned, it is barred by the three years' rule of limitation provided in Article 93, Lim. Act, and so far as the other declarations are concerned, they are barred by the six years' rule of limitation provided in Article 120 the respective periods of limitation being counted from the date of the final publication of the Record of Rights that is 4th July 1921. Article 93 is as follows:

To declare the forgery|Three years |The date of of an instrument at- | |the attempt tempted to be enforced | | ed against the plain- | | tiff.

4. This Article seems to contemplate a case where the plaintiff in the suit is a party to the document or is otherwise bound by it and the cause of action for the suit is an attempt to enforce it against him. These conditions are not satisfied in the present case. Besides, the substantial relief claimed in this suit is a declaration that the rent of the defendant's holding is liable to enhancement. Article 93 therefore has no application. The substantial question for decision in this appeal is whether the prayer for a declaration that the rent of the defendants' Holding is liable to enhancement is barred by limitation. The appellants contend that the real cause of action for this suit arose on 4th July 1921, the date of the final publication of the Record of Rights and the suit, having been brought on 30th June 1933, is barred under Article 120, Limitation Act. Our attention has been drawn to the allegations in para. 10 of the plaint which clearly show that the cause of action for this suit is the erroneous entry in the Record of Rights. Article 120 is as follows:

Suit for which no period| Six years. |When the of limitation is pro- | |right to sue vided elsewhere in | | accrues this schedule.

Mr. A.K. Roy, the learned Advocate for the respondents, contends that this Article cannot apply if there is any other Article in the Limitation Act applicable to the present case. He points to Article 131 as really governing this suit. That Article is as follows:

To establish a periodi |Twelve years.| When the cally recurring right | | plaintiffis | | first refus- | | ed the en- | | joyment of | | the right.

5. If this Article applies, there is no doubt that the suit is within time because it was brought within 12 years from the date of the final publication of the Record of Rights. It is urged that the right to enhancement of rent is a periodically recurring right as held by this Court in Brij Behari Singh and Others Vs. Sheo

Sankar Jha and Others, . It is further urged that a suit for obtaining a declaration that rent is liable to enhancement is a suit to establish a periodically recurring right. That Article 131 applies to a suit for obtaining such a declaration need not be disputed. This proposition will find some support from the decision of this Court in Sri Sri Baidyanath Jiu Vs. Har Dutt Dwari and Others, . But to make Article 131 applicable, it is further necessary that the condition required by col. 3 should be satisfied. Mr. A.K. Roy argues that the plaintiff was first refused the enjoyment of the right to obtain enhancement of rent when the Record of Rights was finally published. In Section 2, Clause (8), Limitation Act, the word "plaintiff" has been defined to include any person from or through whom a plaintiff derives his right to sue. If therefore the present plaintiff is said to derive his right to sue from or through the tenure-holders who were shown in the Record of Rights, he is obviously "the plaintiff" within the meaning of Article 131 (last column).

6. But the question still remains whether the plaintiff was first refused the enjoyment of the right within the meaning of that Article when the Record of Rights was finally published. In the first place, there is no allegation in the plaint that during the course of the settlement proceedings, the then tenure-holders wanted to enhance the rent and their claim was refused. In the second place, the words "when the plaintiff is first refused the enjoyment of the right," to my mind, imply that the right was capable of being enjoyed when the enjoyment was refused. Obviously the enjoyment of a right cannot be refused when the right itself is not capable of enjoyment. u/s 94, Chota Nagpur Tenancy Act, rent is not liable to enhancement, except under certain conditions which admittedly do not prevail here, for a period of 15 years from the final publication of the Record of Rights was finally prepared, the right to enhance rent was not capable of being enjoyed for 15 years.

7. It cannot therefore be said that the entry in the finally published Record of Rights amounted to a refusal of the enjoyment of the right to obtain enhancement of rent. It may be said that the entry in the Record of Rights might be taken to be a denial of that right; but that would not make Article 131 applicable. If the Legislature intended to convey that meaning by the Article, the words used would have been "when the right is first denied" as we find the words used in Article 129 with reference to a suit by a Hindu for a declaration of his right to maintenance are "when the right is denied." In my opinion therefore Article 131 does not apply in the present case.

8. The proper Article of the Limitation Act, applicable to the present case seems to be Article 120. The question now is, when did the right to sue accrue? Dr. D.N. Mitter on behalf of the appellants contends that the right to sue accrued on the final publication of the Record of Rights. Indeed in the plaint there is no specific prayer for a declaration that the entry in the Record of Rights is wrong; but a perusal of the plaint leaves no room for doubt that the real cause of action for the present suit is the entry in the Record of Rights. Para. 10 of the plaint which makes the matter clear runs as follows:

That the jote included in Khatian No. 176 in the name of the defendants is not in mukarrari right and the rent of Rs. 4 payable by them is not a mukarrari rent. They hold the said jote in ordinary occupancy right. The rent of the said jote is liable to enhancement. The document of 1226 B.S. disclosed by them is wholly false. There will be lots of difficulties and disorder in future if such fraudulent and erroneous Record of Rights is allowed to stand. Hence the plaintiff is compelled to institute this suit. Thus the Record of Rights is considered by the plaintiff to be an obstacle which stands in his way with regard to his claim for enhancement of rent and it is with a view to remove this obstacle that the suit has been brought. As pointed out by their Lordships of the Judicial Committee in AIR 1931 89 (Privy Council) , the expression "right to sue" means the right to bring the particular suit with reference to which the plea of limitation is raised, the starting point for limitation being the date when that right was invaded. In AIR 1930 270 (Privy Council) , their Lordships of the Judicial Committee have held with reference to Article 120, Limitation Act that there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right against the defendant against whom the suit is instituted.

9. In the present suit the right asserted is the right to claim enhancement of rent and this right was infringed when in accordance with the claim put forward by the defendants, the entry in the finally published Record of Rights was made. In the plaint there is absolutely no allegation of any further infringement by the defendants. In this view the right to sue must be held to have accrued when the Record of Rights was finally published.

10. Mr. A.K. Roy on the other hand contends that the plaintiff's right to sue could not accrue before his purchase on 2nd September 1929. He relies on the decision in *Bhagwanta v. Sukhi* (1899) 22 All. 33. The facts of the case may be thus briefly stated. The plaintiff's maternal-grandmother, a Hindu widow, made an alienation in 1876 and the transferee in his turn made a further alienation in 1893 in favour of the defendants who came into possession of the disputed property. At the time of the alienation by the widow, the nearest living reversioner was her daughter. The widow died in 1889, but her daughter never took any steps to question her alienation. The plaintiffs, who were the sons of that daughter born subsequent to the alienation of 1876, brought a suit in 1894 during the lifetime of their mother for a declaration that the alienation made by their maternal grandmother in 1876 and the further alienation made by the transferee in 1893 were void as against them and that they were entitled, after the death of their mother, to possession of the disputed property. The lower Courts held that the suit was barred by limitation as it was brought more than six years after the alienation of 1876. On second appeal the decision was reversed. Their Lordships held that the plaintiffs' right to impugn their grandmother's alienation did not accrue until either they were born or their grandmother died and they being all minors when the suit was brought, it was within time. Their Lordships observed:

As regards Article 120, when the Legislature said that a suit may be brought six years from the time when the right to sue accrues, I think it clearly meant the right to sue of the plaintiff himself or some one through whom he claims, not a right of somebody else to sue through whom the plaintiff does not claim.

11. As one reversioner does not claim through or derive his title from another, their Lordships held that though the plaintiffs' mother's right to sue for a declaration might have been barred, the plaintiffs' right which was quite independent of their mother's right was not barred. The ratio decidendi of decision was that the plaintiffs acquired a new right at their birth. In the present case the position is quite different. It cannot be said that the plaintiff here by his purchase of 2nd September 1929, acquired any new right. It has been argued by Mr. A.K. Roy that the purchaser at a rent sale cannot be said to be the representative-in-interest of the judgment-debtor. Indeed the purchaser at a rent sale acquires not merely the right, title and interest of the judgment-debtor but the tenure itself free from encumbrances created by the judgment-debtor. But this does not mean that the purchaser acquires any new right independently of the judgment-debtor. He certainly stands in the shoes of the judgment-debtor except so far as statute gives him the right to avoid encumbrances created by the latter.

12. Here, however, we are concerned not with the entire bundle of rights possessed by the plaintiff as purchaser but with the right asserted by him in this suit, viz. the right to claim enhancement of rent which is said to have been infringed. The Record of Rights affected not merely the rights of the tenure-holder for the time being but the tenure itself. In other words, whoever would take the tenure by whatever process it may be, must hold it subject to the statutory limitations imposed by the, Record of Rights. So when the plaintiff purchased the tenure in September 1929 he took it subject to the limitations imposed by the Record of Rights. No fresh right accrued to him to sue for a declaration that the Record of Rights was wrong. In my opinion, therefore, the suit is barred by limitation under Article 120.

13. It has been contended by Mr. A.K. Roy that the actual relief sought by the plaintiff is that it may be declared that the defendant's holding is liable to enhancement of rent and not that the Record of Rights is wrong. Even assuming that we may look at the form and not to the substance of the plaint, there will in that case be no cause of action for the suit, because since the entry in the Record of Rights there has been no further infringement of the right to claim enhancement of rent. In that view the suit will be liable to be; thrown out for want of cause of action. In the result, I would allow the appeal and dismiss the suit; but in the circumstances parties should bear their own costs throughout.

Dhavl J.

14. I agree. The lower Courts rightly held that the suit did not come within Articles 93 and 131, Limitation Act; and as regards Article 120, which was

applicable to the case, they considered that time ran against the plaintiff from the time of his purchase in 1929. The suit was rightly regarded by the lower Appellate Court as essentially a suit for a declaration that the Record of Rights is incorrect," the "real" cause of action being "a cloud over the plaintiff's title to enhance rent, i.e. in the settlement record." There is no dispute that a suit brought upon such a challenge in the Record of Rights must where there is no change of landlords be brought within six years of the final publication. The landlord's right to enhance the rent of an occupancy raiyat corresponds to a statutory incident of the occupancy holding, and passes to his purchaser along with his other rights as landlord.

15. I cannot see how any transfer of this right, whether voluntary Or otherwise, can operate to create a new right to get the relevant entry in the Record of Rights declared to be wrong, for otherwise, all that a landlord who lets an adverse entry in the Record of Rights stand unchallenged for six years need do is to make a benami transfer. What the plaintiff purchased in execution of the rent decree was the previous landlord's interest in the holding free of any encumbrances created by that or previous landlords. The right of the landlord for the time being to assail the Record of Rights, such as it was, would no doubt pass to the execution purchaser, but if it was already barred before the rent sale, it could neither be revived nor created afresh by plaintiff's purchase.

16. I can find nothing in the wording of Article 120 to compel us to hold that a statutory right of enhancement which has passed from a judgment-debtor to an auction-purchaser becomes a new right merely because the latter is not bound by any encumbrances that the former may have created, or that the right of the landlord to challenge the Record of Rights can be kept indefinitely open by transfers of the landlord's interest.