

(1874) 12 CAL CK 0003

In the Calcutta High Court

Case No : Regular Appeal Nos. 255 and 268 of 1873

Gobindo Coomar Chowdhry

APPELLANT

Vs

W.B. Manson and Others
 W.B. Manson and Others Vs
Gobindo Coomar Chowdhry

RESPONDENT

Date of Decision : 22-12-1874

Acts Referred:

Citation : (1874) 12 CAL CK 0003

Judgement

Phear, J.—The question of limitation is not altogether a simple one. The defendants contend that; the enactment of s. 29 of Beng. Act VIII of 1869 alone governs the case, and if it does, the whole of the plaintiff's claim is unquestionably barred. If, however, the general law of limitation, which is to be found in Act XIV of 1859, applies, either in conjunction with s. 29 of Beng. Act VIII of 1869, or alone, then the plaintiff may be entitled to sue for a part, or even the whole, of his claim. The words of s. 29 of Beng. Act VIII of 1869 are identical with those of s. 32 of Act X of 1859, and it has been decided both by a Full Bench of this Court in the case of Poulson v. Madhusdan Paul Chowdhry B.L.R. Sup. 101, and by a judgment of the Privy Council in Unnoda Persaud Mookerjee v. Kristo Coomar Moitro (1), that the latter enactment applied specially to the limited class of suits which could be maintained in the Collector's Courts under the provisions of Act X of 1859; and its application to those suits was unaffected by any provisions of the general law of limitation comprised in Act XIV of 1859. But so far as the present suit is concerned, Act X of 1859 has been repealed by Beng. Act VIII of 1869, and although the Bengal Legislature has, it may be said put s. 29 of Beng. Act VIII of 1869 in the place of s. 32 of Act X of 1859, it may be open to question, whether the relation between Act XIV of 1859 and the enactment of 1869 of the Bengal Code is precisely the same as that which Act XIV of 1859 bore to s. 32 of Act X of 1859 of the Indian Legislature. The changes of jurisdiction as to rents-suits, which was effected by Beng. Act VIII of 1869 in repealing Act X of 1859, and the omission of the framers of s. 29 of the Bengal Act to preserve by express words the operation of

this section from being influenced by any of the qualifying provisions of Act XIV of 1859, introduce some difficulty in the way of arriving at a correct opinion upon this point. On the whole, however, we think that the principal reasons which weighed with the Privy Council in the judgment referred to have not been materially weakened in force by the later provincial legislation and that the words of a. 29 of Beng. Act VIII of 1869 are intended to apply specially, and exclusively of Act XIV of 1859, to the same class of cases as those which s. 32 of Act X of 1859 applied to, although that class cannot now be defined, as it formerly could, by reference to the jurisdiction of the Court in which the cases fall to be entertained. We are of opinion that the class is limited to suit for arrear of rent simply, as "arrears of rent" are defined in s. 21 of Bang. Act VIII of 1869, i.e., inasmuch as these words are the same as those of s. 20 of Act X of 1859, which defined the jurisdiction of the Collector in this respect, is limited to such suits for the recovery of arrears of rent as the Collector could have entertained under that Act.

2. Now it is certain that the Collector could not have tried the matter of the present suit, because the plaintiff in the first instance preferred his claim in the Court of the Collector, and it was eventually dismissed in that Court on the ground of want of jurisdiction, and this decision was affirmed by the High Court; for this reason the plaintiff instituted the present suit in the Civil Court. It appears to us, therefore, clear, that the question of limitation in the present case is independent of s. 29 of Act VIII of 1869, and is governed only by Act XIV of 1859.

3. But although the present suit is not a suit for the recovery of arrears of rent within the meaning of s. 29 of Beng. Act VIII of 1869, it is certainly a suit for rent of land, and so is, we think, within the scope of cl. 8, s. 1 of Act XIV of 1859. The judgment of the Privy Council already referred to, if any authority be needed, shows that the word "land" in this section is not qualified by the immediately preceding words, and extends to all ordinary agricultural land. This section, therefore, imposes a limitation of three years for the institution of the plaintiff's suit, to be computed from the time when the cause of action arose, and the cause of action in respect of each constituent part of the claim arose when the kist which it represents became due.

4. S. 14 of the same Act, however, provides that, "in computing any period of limitation prescribed by this Act, the time during which the claimant, or any person under whom he claims, shall have been engaged in prosecuting a suit upon the same cause of action against the same defendant, or some person whom he represents, bona fide and with due diligence, in any Court of Judicature which, from defect of jurisdiction or other cause, shall have been unable to decide upon it, or shall have passed a decision which, on appeal, shall have been annulled for any such cause, including the time during which such appeal, if any has been pending, shall be excluded from such computation."

5. And with regard to the plaintiff's claim of arrears of rent for the period

between Asar 1271 (June-July 1865), and Chaitra 1273 (March-April 1867), he instituted a suit in the Collector's Court on the 17th April 1867, which ultimately, on the 1st of May 1871, failed for want of jurisdiction, mad with regard to his claim for the period between Chaitra 1273 and 1275 (March-April 1866 and 1868), he instituted a suit in the Collector's Court on the 27th July 1869, which also failed for the same cause on the 1st May 1871. If, therefore, these suits were prosecuted bond fide and with due diligence, the plaintiff is now entitled to a period of limitation equal to seven year and half a month for his suit so far as concerns his claim to arrears of rent for the years 1271, 1272, 1273; and a period equal to four years nine months for his suit so far as concerns his claim to arrears of rent for the years 1274 and 1275.

6. The Subordinate Judge, for reasons which we cannot accept, refused to allow the plaintiff the benefit of s. 14 of Act XIV of 1859. It seems to us that the bona fides and diligence of that section have reference solely to the conduct of the suit, which tailed for want of jurisdiction. And we conclude from the evidence that the plaintiff was entirely in earnest in instituting and prosecuting the suits of 1867 and 1869, and quite believed until the termination of those suits on the 1st May 1871, that the Collector's Court had jurisdiction to entertain and determine them. We also think that he prosecuted these suits with due diligence. Consequently he is, in our opinion, entitled, as regards the matter of his claim in the present suit, to the periods of limitation which have just been mentioned.

7. The second principal head of defence is, we think, based upon a slight misapprehension of the nature of the present suit. If the wit had been instituted by the plaintiff solely for the purpose of having determined as between himself and his co-talookdars the portion of the jama due to the zemindars which ha himself ought to pay, then no doubt each of the other co-sharers in the talook would have a right, without defeating the suit, to ask that his own share of the jama should be determined at the same time, and so far as the present suit has this object in view, each of the defendants is probably entitled to make this request. But plainly, the defendants do not now object merely that they have not been afforded a reasonable opportunity of" settling as amongst themselves their respective liabilities to contribute to the aggregate jama payable by all; they simply want to defeat the plaintiff's claim for arrears of rent against them. But this, in our judgment, they cannot do. The zemindar, by becoming a shareholder in the talook, does not lose his right to the joint responsibility of all the other shareholders for the due payment of the rent; he only becomes bound to make in his claim for rent a just and equitable allowance for that portion of it which he, as a shareholder in the talook, ought to contribute towards the common burden.

8. On the whole, we think that the decision of the lower Court is right so far as it goes: but that the plaintiff ought to be allowed a greater period of limitation in respect of the different parts of his claim than the Subordinate Judge has afforded him. The decree of the lower Court must be varied accordingly, and the plaintiff must have his costs of this appeal. For the reasons above given, the

appeal of the defendant, Manson, must be dismissed.

PRIVY COUNCIL*

The 26th November 1872.

Unnoda Persaud Mookerjee v. Kristo Coomar Moitro.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Limitation--Suit for Arrears of Rent--Act X of 1859, s. 32--Act XIV of 1859.

The limitation in a suit for arrears of rent brought in the Collector's Court, under Act X of 1859, is that provided by s. 32 of that Act, and not that provided by Act XIV of 1859.

APPEAL from a decision of the High Court at Calcutta (Morgan and SetonKarr, JJ.), dated 21st April 1865.

Mr. Leith and Mr. Doyne for the appellant.

The respondent did not appear.

The judgment of their LORDSHIPS was delivered by

Sir M.E. Smith.--The single question to be decided in this appeal is, whether to an action for rent brought in the Collector's Court under Act X of 1859 (The Rent Act), the bar of limitation applicable to it is that provided by the 32nd section of the same Act, or that provided by Act XIV of 1859, passed six days later.

If the limitation of s. 32 of Act X is still in force, the action is barred; but if, as the appellant contends, that section has been repealed and the limitation of Act XIV is applicable to the case then it is not.

The 32nd section of Act X enacts, that" suits for the recovery of arrears of rent shall be instituted within three years from the last day of "the Bengal year, or from the last day of the month of Jeyt of the Fusly or Willayuttee year, in which the arrear shall have become due."

By Act XIV, s. 1, cl. 8, the limitation applicable- to suits for the rent of any buildings or lands is the period of three years from the time the cause of action arose.

The present suit would be barred even under Act XIV, but for the operation of cl. 14 of that Act, which provides that in computing the period of limitation prescribed by that Act, the time occupied in prosecuting an abortive suit, shall, under certain conditions, be excluded. There has been litigation, which would bring the present case within this section, and prevent the suit being barred if Act XIV is applicable to it. There is no analogous provision in Act X, and it is admitted by the appellant that if that Act governs it, the suit is barred.

Act X is not expressly and specially repealed; but the enactments of the later Act

are no doubt in their terms large enough to (sic)ude the limitation contained in it; for s. 1 of Act XIV enacts, that "no suit shall be maintained unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding," and among the suits to which it is enacted that, "the same shall be applicable" are, "all suits for the rents of any buildings or lands (other than summary suits before the Revenue Authorities under Regulation V of 1822, of the Madras Code)." S. 18 of the same Act also enacts that "all suits to which the provisions of this Act are applicable shall be governed by this Act, and no other law of limitation, any Statute, Act, or Regulation now in force notwithstanding."

The question, however, arises whether the special legislation contained in Act X is not of such a special kind, that, according to a well established rule for the construction of Statutes, it should be presumed that the Legislature did not intend by the general enactment to interfere with it. The reason for this rule of construction is well expressed by Lord Hatherly, when Vice-Chancellor in *Fitzgerald v. Champneys* 30 L.J., Ch., 777. at p. 782 and in terms which appear to be very applicable to the legislation their Lordships have to consider in the present appeal:--"The reason is that the Legislature having had its attention directed to a special subject, and observed all the circumstances of the case, and provided for them, does not intend, by a general enactment afterwards, to derogate from its own act, where it makes no special mention of its intention to do so."

Act X established a rent-law for the Bengal mofussil only; it was intended to form a special and complete code of procedure with regard to the trial of questions relating to rent and the occupancy of land in the mofussil, and by which all the proceedings before the Collectors were to be regulated and governed. The preamble shows an intention to deal with questions regarding the right of ryots in relation to the occupancy of lands. One of the objects was to prevent oppression. It recites that it was expedient to extend the jurisdiction of the Collectors, and to prescribe rules for the trial of the above questions as well as of suits for the recovery of arrears of rent, and s. 23 (cl. 4) enacts that "all suits for arrears of rent due on account of land either khiraji or lakhiraj, or on account of any rights of pasturage, forest-rights, fisheries, or the like," shall be cognisable by the Collectors, and shall be instituted and tried under the provisions of the Act, and shall not be cognizable by any other Court or in any other manner.

This enactment gives exclusive jurisdiction to the Collectors, and clearly indicates the intention of the Legislature to be, that the special questions which are that made the subject of peculiar legislation, shall be tried according to the procedure established by the Act, and in no other manner.

The provision for the limitation of suits is a part of the procedure thus established,

The period prescribed by Act X, as already stated, is "three years from the last

day of the Bengal yeas, or from the last day of the month of Jeyt, of the Fusly or Willayuttee year in which the arrears became, due." A proviso is added that if the suit is for enhanced rent, not confirmed by a competent Court, the suit must be brought within three months from the end of the year, as above defined, on account of which the enhanced rent is claimed. The period thus defined and prescribed, and the provision as to enhanced rent, show that these rules were framed with especial reference to the case of ryots and other tenants in the mofussil, and to their tunes and modes of paying rents.

Act XIV has no provision as regards enhanced rent, and it could hardly have been intended that part of the limitation, as regards the rents of ryots, should be found in one Act, and part in another.

Beading together the 23rd and 24th sections of Act X, it will be found that the Act prescribes the same period of limitation for rent of land, and of rights "of pasturages, forest-rights, fisheries, or the like. Act XIV, by the enactment relied on as superseding this limitation, relates to rents, "of buildings, or lands" only. These words clearly would not comprehend rent of rights of pasturage, forest, and the like. It is plain also that the longer periods mentioned in Act XIV would not be applicable to suits for these rents, in consequence of the 3rd clause of that Act. Such suits would still be governed only by the limitation in Act X; and the consequence therefore of holding that the limitation as regards suits for rents of land in Act X is repealed by the later Statute, would be to establish different periods for suits for rents of land, and those for rents of pasturage and the like.

It cannot reasonably be presumed that when the Legislature, in the particular legislation, specially devised to meet the case of all these rents, had put them in the same category, it intended by the subsequent general Act to separate and assign different periods to them. No reason can be suggested for such a separation, or for supposing that the Legislature meant that the provisions to be found in ss. 11 to 14 of Act XIV, suspending or prolonging the periods of limitation when certain disabilities exist, should extend to one set of these rents and not to the others. It should be observed that none of these provision* are introduced into Act X, and it may well be that the Legislature thought they were not adapted to the cases for which the simple procedure established by that Act was intended to provide.

Another point arises on a comparison of the Acts, which is material to be regarded in construing them. Act X was to come into operation at once, Act XIV only after an interval of two years; and different provisions were made in the two Acts as to suits for arrears due at the time of the passing of the Acts. It does not seem a violent presumption to suppose that the Legislature in framing the two Acts with these distinctive provisions, Intended that both should have independent force.

The fact that the Acts were virtually contemporaneous appears strongly to support the presumption arising from the above considerations, viz., that it was

not meant that the harmony of the system of the special Act, which had been designed for special objects, should be disturbed by the general Act.

The words "rent of any buildings or lands," which occur in Act XIV, are, no doubt, sufficiently large in themselves to comprehend all lands; and their Lordships cannot assent to one of the reasons given by Norman, C.J., for his judgment in the case of Poulson, v. Madhusudan Pal Chowdhry B.L.R., Sup. 101; see p. 104, viz., that the words "rent of lands" might be construed to be confined to lands appurtenant to buildings. They think the works cannot be so limited, for Act XIV was a general law intended to have force throughout the British territories in India. But these comprehensive words will have effect and operation, without holding them to apply to the special legislation of Act X, which is confined to the Bengal mortgage.

It should be observed that although Act XIV proposes to consolidate the laws relating to the limitation of suits, it clearly was not intended to be of universal application. It is confined by s. 18 to suits "to which the provisions of the Act are applicable." The Legislature therefore contemplated some cases of limitation which would remain unaffected by the general legislation. It would certainly be an unfortunate result of the attempt to consolidate the law, if the effect of the legislation was, that as to suits for rents triable by the Collectors under Act X, the limitation of them was to be found partly in that Act and partly in Act XIV. It would seem to conform more to the spirit of the legislation so to construe the Act as to prevent this result.

The exception in Act X of summary suits before the Revenue Authorities under Regulation V of 1822, of the Madras Code, has been strongly relied on by the appellants as indicating an intention not to except suits before the Collector under Act X. Undoubtedly, this exception adds to the difficulty of construction. But the Madras Regulation related to summary suits. Suits of that kind were abolished in Bengal by Act X, and a code of special procedure with special rules, including one of limitation substituted for them. It may not have occurred to the framers of Act XIV when referring to these summary suits in Madras, that it was necessary to except by express words suits of another kind regulated in their entirety by special legislation.

Difficulties have frequently been imposed on Courts of Justice in construing Statutes, arising from the apparent conflict between special and general legislation; and the rule of construction that special legislation is not repealed by general enactments, unless a clear implication of that intention can be found, was adopted in early times to meet these difficulties, and has been acted on in numerous modern instances. See *Thorpe v. Adorns* L.R. 6, C.P., 125 and *The Queen v. Champneys* L.R. 6, C.P., 384, at p. 394. In the latter case Bovill, C.J., says:--"It is a fundamental rule in the construction of Statutes, that a subsequent Statute in general terms is not to be construed to repeal a previous particular Statute, unless there are express words to indicate that such was the intention, or unless such an intention appears by necessary implication."

Their Lordships, upon a comparison of the two Statutes in question, with reference to their objects, and considering that they were virtually contemporaneous Acts, have come to the conclusion that the intention to repeal the particular law is not made distinctly to appear, either by express words or necessary implication, and, consequently, that the limitation of Act X remains in force.

They are not dealing with the question as *res integra*, for the same construction was given to the Acts by the Full Bench of the High Court of Bengal, in the case of *Poulson v. Madhusudan Pal Chowdhry* B.L.R., Sup. 101; see p. 104, already referred to, which was decided in the year 1865. It is true that this decision preceded by, a short time only, the judgment now under appeal; but it has probably been acted upon in the numerous suits which must since have arisen in the Bengal Presidency under Act X. Unless, in this condition of things, their Lordships found that the above decision of the Full Court was manifestly wrong, they ought not to disturb it. They have not arrived at this conclusion, and it will, therefore, be their duty in the present case to advise Her Majesty to dismiss this appeal, and to affirm the judgment of the High Court.

* Present:--Sir J.W. Colvill, Sir B. Peacock, Sir M.E. Smith, Sir R.P. Coll(sic)er and Sir L. Peel.