
(1918) 08 CAL CK 0058
In the Calcutta High Court

Jitendra Gopal Roy and Others

APPELLANT

Vs

Matanginti alias Susamoyi Debya and Others

RESPONDENT

Date of Decision : 22-08-1918

Acts Referred:

Estates Partition Act, 1897 — Section 119, 83

Citation : AIR 1919 Cal 215 : 49 Ind. Cas. 965

Hon'ble Judges : Lancelot Sanderson, C.J.;Panton, J

Bench : Division Bench

Judgement

Lancelot Sanderson, C.J.—This is an appeal from the judgment of the learned Subordinate Judge, by which he has decided in favour of the plaintiffs, and the learned Vakil for the appellant, who is defendant No. 2, has relied upon three points. First of all, he argued that this suit would not lie. The second point he relied upon was that the Deputy Collector had power to make the order which he did u/s 83 of the Estates Partition Act of 1897, and...thirdly, if he failed upon the first two points, then he wishes to rely upon the argument that the suit was barred by the Limitation Act. I will take the second point first, as it is more convenient to deal with that in the first instance. Section 83 provides as follows :

When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a Patni or other permanent intermediate tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created," he may make certain orders provided in the section.

2. With regard to the facts the learned Subordinate Judge stated as follows: "it is an admitted fact in the case that the defendants' Patni was created by the plaintiffs predecessor alone who was one of the co-sharer landlords of the Mehal," and, in view of those facts, the learned Judge came to the conclusion that the Deputy Collector had no jurisdiction u/s 83 to make the order which in fact he did, as the Patni was not created by all the proprietors of the estate, and, it had not been admitted by all the recorded proprietors to have been so created. I agree with the conclusion at which both the lower Courts arrived: I think the

order which the Deputy Collector made was made without jurisdiction.

3. Now, with regard to the first point the learned Vakil relied upon Section 119 of the Estates Partition Act, which provides, as far as is material to this point, as follows : "No order made u/s 20, Section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except Section 81)"--(Chapter IX includes Section 83)--"shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act."

4. The learned Munsif came to the conclusion that the Deputy Collector had not made this order u/s 83 for the reasons which he set out in his judgment: and, of course, if that be so, that is, if the Deputy Collector did not purport to have made this order u/s 83, then Section 119 would not apply and the suit would not be barred. But I will assume for the purpose of my judgment that the Collector did purport to make the order u/s 83 of the Estates Partition Act, still I think the suit would lie, because in my judgment Section 119 does not apply to a case of this kind where the order of the Collector was made without jurisdiction and was, therefore, wholly void,

5. Then with regard to the third point, namely, the question as to the Limitation Act, it has been assumed by both sides for the purpose of this appeal that the order, which was referred to in the prayer contained in the plaint and which was alleged to have been made by the Collector, was made in the month of January 1912: and, the learned Vakil for the appellant has argued that Article 14 of the Limitation Act applies to this suit and that it should have been brought within a year from January 1912; and, that inasmuch* as it was not brought until 1914, the suit is out of time.

6. Now, Article 14 of the Limitation Act is as follows :

"Description of suit. Period of Time from Limitation. which period begins to run. To set aside any act One year. The date of or order of an officer the act or of Government in his order." official capacity, not herein otherwise expressly provided for.

7. The first thing which is to be noted is that in form this is not a suit to set aside any order of an officer of Government in his official capacity. It is a suit praying for "a declaratory decree to the effect that the allotment made by the Collector between the co-sharer landlord and the Patnidars...cannot be legally valid and that the same is fit to be null and void as without jurisdiction and that it is not binding between the plaintiff and the defendants." It has been held by two learned Judges of this Court in *Ananda Kishore Chowdhury v. Daiji Thakurani* 1 Ind. Cas. 549 : 36 C. 726 : 10 C.L.J. 189 to this effect: "Article 14 of the Limitation Act no doubt provides that a suit to set aside any act or order of an officer of Government in his official capacity, not otherwise expressly provided for, must be commenced within a year from the date of the act or order. It has been held, however," in certain cases there mentioned, "that an order made without jurisdiction is a nullity and need not be set aside; to an order of this

description, Article ; 14 has no application." Therefore, in the first instance, I do not think that the form of this suit comes within the description of Article 14. But the learned Vakil says that the substance must be looked at. Even if it be taken as a suit for setting aside an order, there is authority of this Court to the effect that where ""that order is without jurisdiction and is in reality a mere nullity, Article 14 has no application." I do not think it necessary to express any opinion as to whether I agree with that last sentence, because in this case I rest my judgment upon the ground that the suit is one asking for a declaration that the allotment made by the Collector is not legally valid. The form of this suit is more like the suit in *Bejoy Chand Mahatab v. Kristo Mohini Dasi* 21 C. 626 : 10 Ind. Dec. (N.S.) 1048, in which it was held that Article 14 did not apply.

8. Now, that being the case, the question arises what Article applies. The learned Vakil for the respondent has urged that Article 120 applies, and it has not been suggested by the learned Vakil for the appellant that (failing Article 14), any other Article applies, nor have we heard any argument sufficient to satisfy us that Article 120 does not apply. Consequently I think that Article 120 applies, which gives six years from the time when the right accrues. If it be taken then that the allotment was made by the Collector in January 1912, the right to sue accrued as soon as the order was made, because it was made without jurisdiction. Therefore, the six years would run from January 1912, and inasmuch as this suit was brought in 1914, in my judgment it was brought within time.

9. There is another matter to which I should refer: The learned Vakil urged that it was not shown when the order of the Deputy Collector was made, and that that order might have been made sometime before 1912. That is true: But if he desires to rely upon the Act of Limitation, he must show that the facts of the case bring it within the Act. We cannot speculate as to when the order of the Deputy Collector was made.

10. For these reasons I think that this appeal should be dismissed with costs.

Panton, J.

11. I agree.