

(1929) 11 CAL CK 0005
In the Calcutta High Court

Jogendra Nath Jana and Others

APPELLANT

Vs

Baidya Nath Das and Others

RESPONDENT

Date of Decision : 27-11-1929

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103B, 111B, 111B(1)(d)

Citation : AIR 1930 Cal 767

Hon'ble Judges : Mitter, J;Graham, J

Bench : Full Bench

Judgement

Graham, J.—This appeal by the plaintiffs has arisen out of a suit for a declaration that an entry in the Record-of-Rights, to the effect that the tenants (defendants) are entitled in the event of hajah, or destruction of crops by flood, to a proportionate remission of rent is wrong, and for correction of the same.

2. A preliminary objection was taken that the appeal is incompetent on the ground that two of respondents, 11 and 24, have died and that no substitutions have been made. There is no substance in the objection as the suit is a representative suit.

3. The short point involve in the appeal, and this is the only point which has been argued before us, is one of limitation. The Courts below have held that the suit was barred by six years limitation under Article 120, Lim. Act.

4. The question is whether limitation runs from the date of the final publication of the Record-of-Rights, or from the date of the final certificate. The Record-of-Rights was finally published on 20th January 1917 and the certificate was signed on 16th June 1917. If time runs from the date of the final publication the suit will be barred, whereas, if it runs from the date of the certificate, it will be in time. The matter is concluded by a recent decision of this Court Asutosh Bhuiyan and Others Vs. Radhika Lal Goswami, , where it was held that the right to sue u/s 111-B, Ben. Ten. Act, accrues on the date of publication of the Record-of-Rights inasmuch as that record gives rise to a presumption of correctness which casts a

cloud over the title of the person affected thereby. For the appellants it was argued that, inasmuch as Section 111-B, Ben. Ten.-Act (as it formerly stood), makes provision for stay of suits for a period of three months from the date of the certificate of final publication, it may be inferred that the intention of the legislature was that no suit should be instituted until after the date of the certificate, and that it would be anomalous to hold, notwithstanding this provision, that it was open to an aggrieved party to sue in the interval between final publication and the certificate. No such intention can however be found in the Act. Section 111-B merely provides for suspension of limitation for three months after the certificate has been made, and that does not necessarily mean that a party aggrieved by an entry in the khatian is precluded from suing so soon as his rights are prejudicially affected by the finally published record. His right to sue accrues there and then.

5. The position may certainly be said to be somewhat anomalous as it may be argued that if a suit cannot be brought until three months after the certificate, a fortiori, it ought not to be permissible to sue as soon as the final publication has taken place. We are in any case bound by the decision referred to above with which I do not find sufficient reason to disagree.

6. The appeal must accordingly be dismissed with costs. The cross appeal was not pressed and is also dismissed.

Mitter, J.

7. The question of law which falls for determination in this appeal is one of limitation. The relevant facts necessary for deciding this question are not now in dispute. They are briefly these: The plaintiffs now appellants are the landlords of Mahal Shangra. The defendants now respondents represent the tenants of that mahal. In the Record-of-Rights of the mahal which was finally published on 20th January 1917, the khatian of miscellaneous rights contained an entry to the effect that the tenants of the mahal are entitled to get remission of rents in case of hajah (destruction of crops by flood). On 16th June 1923 i.e. more than six years after the final publication of the Record-of-Rights, the plaintiff brought the suit in which this appeal arises for a declaration that the said entry was erroneous and ultra vires.

8. The suit was a representative suit and notices and advertisements under Order 1, Rule 8, Civil P.C., were issued. The, tenants defendants, amongst other defences, raised the plea that the suit was barred by limitation. They also contended that the Record-of-Rights was correct as there was a custom in the mahal by which the tenants have been getting proportionate remission of rent in case of hajah. Both the Courts below have come to the conclusion that there was no such custom, as alleged by the defendants and that the entry in the Record-of-Rights is wrong but both the Courts below have concurred in holding that the plaintiffs' suit is barred by the statute of limitation and have dismissed the suit on that ground.

9. In second appeal the learned Advocate-General, appearing for the plaintiffs, has contended that the decision of the Courts below on the question of limitation is wrong, and has relied on an unreported decision of this Court, in appeal from appellate decree No. 743 of 1922, in support of his contention. The suit is one u/s 111-B(1)(d), Ben. Ten. Act, and it is contended that under Article 120, Lira, Act, time begins to run in respect of such a suit after three months of the certificate of final publication and not from the date of the final publication as the Courts below have held. It is said that as no suit for the decision of any special condition or incidents of the tenancy could be brought within three months from the date of the certificate of final publication of the Record-of-Rights the cause of action for such a suit can only arise after three months of the date of the certificate of such publication, and as in the present case the date of the certificate is 16th June 1917 the suit is well within six years and three months of that day. On the other hand the respondents contend that the cause of action for the suit accrued on the date of the final publication, when a cloud was cast on plaintiffs' title to receive full rents even in the case of hajah or partial destruction of crops by flood.

10. The question which we have to determine is as to which of the two contentions is right. The plaintiffs are aggrieved by the entry in the Record-of-Rights which raises a presumption against them and. in favour of the defendants with -reference to the custom of remission of rent for the hajah. u/s 103-B, Ben. Ten. Act, every entry in a Record-of-Rights finally published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved by evidence to be incorrect. The cause of action for the declaration that the entry is wrong arose when the entry was finally published, and there was nothing to prevent the plaintiffs from bringing a declaratory suit immediately on such final publication. But as soon as the certificate stating the fact of such final publication and the date thereof is made the further progress of the suit is arrested for three months from the date of the certificate and it is therefore that Section 111-B(4) provides that, where the institution of the suit is delayed owing to the operation of Sub-section (1), the period of three months shall be excluded in computing the period of limitation prescribed for such suit. We are not unmindful of this: that much can be said in favour of the view that it can hardly have been the intention of the legislature to allow the institution of a suit between the date of the final publication and date of signing the certificate in view of the provisions, of Section 111-B(1), but it seems to me that the intention has not manifested itself either expressly or by the plainest implication in the language of the subsection, and in the absence of such clear expression of intention we shall] not be justified in holding that no suit could be brought between the final, publication of the Record-of-Bights and the date of the certificate till after three months of the date of the certificate.

11. While we feel that the language of Section 111-B leads to a manifest contradiction of its apparent purpose or to some inconvenience, presumably not intended, we cannot modify the language of the statute to meet the intention

unless it is impossible for us to resist the conviction that the legislature could not possibly have intended what its words signify and that the modifications thus to be made were mere corrections of careless language and really give the true meaning: see Maxwell on Interpretation of Statutes, Edn. 6, p. 406 (Chap. 9). I am not prepared to say in this case that we are under the influence of such irresistible conviction. The plain language of the statute must therefore be given effect to and the result is that the plaintiffs get the deduction of three months in computing the period of limitation. But that does not assist the plaintiffs-appellants; for if that period is taken into account the suit is still beyond the six years of the date of final publication. We are fortified in this view by a decision of Suhra-wardy and Jack, JJ., in the case of Asutosh Bhuiyan and Others Vs. Radhika Lal Goswami, . The unreported decision to which the Advocate-General refers does not assist the appellants, for it does not appear from an examination of that case that the suit was brought beyond six years and three months from the date of the final publication of the Record-of-Rights. We think the view taken by the Courts below is right. For these reasons I agree with my learned brother that the appeal must be dismissed.

12. A cross-objection was preferred by the defendants which has not been pressed and must be dismissed.