
(1926) 05 PAT CK 0012
In the Patna High Court

Kumar Rameshwar Narain Singh

APPELLANT

Vs

Mahabir Prasad and Others

RESPONDENT

Date of Decision : 27-05-1926

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 212, 231
Limitation Act, 1908 — Article 95

Citation : 96 Ind. Cas. 529

Hon'ble Judges : Dawson Miller, C.J.; Foster, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—In this case the plaintiffs were the kashtkars of a holding in Mouza Manjura consisting of 8.43 acres. They, were in default in the payment of their rent, a rent suit was brought against them and a decree was passed in favour of the present defendant. The decretal amount was in round figures Rs. 52. Before the sale which took place under the provisions of the Chota Nagpur Tenancy Act the plaintiffs appear to have paid into Court at different times certain sums on account of the decretal amount and at the date of the sale of the property in execution of the decree which was on the 3rd December, 1917, there was still a balance of Rs. 11-5-0 due. On the 29th December, 1917, that is within a month of the date of the sale, the plaintiffs sent this sum to the defendant's mukhtar as payment of the balance due under the decree. Under the provisions of Section 212 of the Chota Nagpur Tenancy Act the judgment-debtor in such cases or any one who claims under a title acquired before the sale may within a period of 30 days from the date of the sale apply to have it set aside on depositing in Court 5 per cent. of the purchase price together with the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered less any amount which may from the date of the proclamation have been received by the decree-holder. The plaintiffs did not comply strictly with the provisions of that section because they did not deposit the money in Court. They did, however, pay the money to the decree-holder who was himself the purchaser of the property at the auction sale. Therefore, the defendant was the

only person interested in the sale apart from the plaintiffs themselves at that time. The plaintiffs in such circumstances might reasonably expect that they would get back their property for they had paid the small balance that was due within a month of the date of the sale. So far, however, from getting their property back, the defendant who was their landlord and decree-holder in the rent suit; actually applied for confirmation of the sale and the sale was accordingly confirmed. Whether the defendant remained in possession of the holding, or for how long, if at all, he remained in possession is not very clear from the facts disclosed in the case; but we are told that the landlord has since that date and sometimes apparently before the suit was brought settled the land with other tenants, but whether those other tenants have actually got possession or whether the plaintiffs are still in possession again we do not know. They asked in the present suit; that it may be held that the defendant got the sale fraudulently confirmed and, that the order confirming the sale should be set aside, and they further asked that if in the opinion of the Court the plaintiffs are considered out of the possession of the disputed land then khas possession: may be awarded to them.

2. Two points arose for consideration in the trial Court, first, whether the circumstances which I have detailed amounted: to a fraud on the part of the landlord against...his, tenants and, if so, whether the sale should be set aside, that is to say, whether the title to the land should be restored to the plaintiffs, and, secondly, whether even if the plaintiffs were in law or equity entitled to get back possession of the land, they were not barred by limitation having brought their action more than one year after the date of the sale. The learned Munsif before whom the case came for trial arrived at the conclusion that there was undoubtedly, fraud on the part of the defendant and he considered that the defendant was wrong and fraudulent in getting the sale confirmed in spite of the fact that full payment of the sums due to him had been made within one month of the sale. He considered, however, that the suit was barred by limitation although he does not specify under which Article of the Limitation Act, or whether under any provision of the Chota Nagpur Tenancy Act the suit was barred. The matter went on appeal to the Subordinate Judge, the plaintiffs contending in that appeal that the suit was not barred by limitation. The finding of fact that the defendant had got the sale fraudulently confirmed was not disputed, that finding being apparently accepted by the defendant on appeal. In the result the learned Subordinate Judge came to the conclusion that neither Section 231 of the Chota Nagpur Tenancy Act nor Article 12 of the Limitation Act applied to the case but that Article 95 of the Limitation Act was the Article applicable. That Article provides for a suit to set aside a, decree obtained by fraud, or for other relief on the ground of fraud, the period of limitation being three years from the date when the fraud becomes known to the party wronged.

3. From that decision there was a second appeal to this Court which came for hearing before Mr. Justice Kulwant Sahay. He agreed with the finding of the lower Appellate Court that the case was governed by Article 95 of the Indian Limitation

Act, and not by Article 12 or by Section 231 of the Chota Nagpur Tenancy Act. A further point was urged before him, namely, that under the Chota Nagpur Tenancy Act no provision is actually made for having a sale confirmed and, therefore, the sale was complete on the 3rd December and required no confirmation, and that any fraud which may have been perpetrated by the defendant was not a fraud bringing about the sale and that the sale as such was free from fraud, the fraud alleged having occurred subsequently. This point, if it could be established, and if the defendant could satisfy the Court that the fraud perpetrated by him was something altogether apart from the sale, was a point which he could have taken in first appeal when the plaintiffs appealed from the decision of the Munsif on the ground of limitation, for it is obvious that although he might not have been able to support the Munsif's decision on the ground of limitation, still he could have supported it upon this ground of fraud by urging before the Subordinate Judge that, although the Munsif may have been wrong in the view he took, still his decision was right because there was in fact no fraud connected with the sale. The point, however, was not taken and it appears quite clearly from the decision of the Subordinate Judge that the findings of fact in the Court below were not challenged by the defendant and the only question debated in the appeal was whether the suit as held by the trial Court was barred by limitation. Mr. Justice Kulwant Sahay accordingly refused to entertain the point in second appeal and, in my opinion, he was perfectly justified in doing so. The point is not one entirely in bar of the suit. It is undoubtedly a point of law but it is-a point that depends to some extent upon questions of fact and it is certainly a point which was open to the defendant in the first Appellate Court. If he did not choose to raise such a point when he might have, I do not think it can be said that he is of right entitled to raise such a point in second appeal. Moreover, looked at from an equitable point of view it seems to me quite clear in this case that the defendant having accepted the balance of the decretal amount due, to him, impliedly undertook to re-transfer the property to the plaintiffs, or at all events not to go on with the sale and have it confirmed as in fact he did. That he practised a fraud I do not think can be disputed, and, therefore, I am certainly not prepared to interfere with the decision come to by the learned Judge of this Court.

4. With regard to the second point here again I think that the decision of Mr. Justice Kulwant Sahay should be affirmed. Article 231 of the Chota Nagpur Tenancy Act places a limitation period of one year upon all suits and applications instituted or made under this Act for which no period of limitation is provided elsewhere in the Act. It is, to my mind, quite clear that a suit of the present nature is not a suit under the Chota Nagpur Tenancy Act. The right to sue for the possession of land and the right to ask for a declaration that a sale has been fraudulently confirmed is clearly not a suit under the Chota Nagpur Tenancy Act. It is true that the Act in some cases takes away the right to sue for setting aside a sale but it nowhere grants that right although to some extent it limits it. Then with regard to the Limitation Act, Article 12 under which one year's limitation is

prescribed is with regard to cases of a sale in execution of a decree of the Civil Court, and if the matter stood there, there is no doubt that it might apply to the present case, but Article 95 seems to be a more specific Article in so far as sales are concerned. That Article applies to suits to set aside a decree obtained by fraud or for other relief on the ground of fraud. If the sale, therefore, which it is sought to be set aside is obtained on the ground of fraud then I think that, the more specific" Article 95 ought to be applied and that the more general Article must be governed by that which is more specific. It is upon this ground that Mr. Justice Kulwant Sahay dismissed that part of the appeal and, in my opinion, he was quite right.

5. This appeal will be dismissed with costs.

Foster, J.

6. I agree.