
(1966) 08 PAT CK 0011
In the Patna High Court
Case No : A.F.A.D. No. 642 of 1960

Lakshmi Kanta Jha

APPELLANT

Vs

Lal Bihari Saran Singh and Others

RESPONDENT

Date of Decision : 18-08-1966

Acts Referred:

Cess Act, 1880 — Section 99
Limitation Act, 1963 — Section 15(1)

Citation : AIR 1967 Patna 236

Hon'ble Judges : Tarkeshwar Nath, J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Lalnarain Sinha, Raghunath Jha and Padmanand Jha, for the Appellant; S.N. Dutta and L.M. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Tarkeshwar Nath, J.—This appeal was filed by MaharajdhiraJ Kameshwar Singh of Darbhanga, but after his death his name has been deleted and the name of Pandit Lakshmi Kanta Jha has been mentioned as the appellant in the memorandum of this appeal. This appeal by the plaintiff appellant arises out of a suit for recovery of arrears of mokarrari rent for 1355 to 1357 Faslis in respect of a tenure situated in village Pathra Tinauri, touzi No. 4100. The defendants were the tenure-holders and the proprietary right in the rent-claimed tenure belonged to Rani Bhuneshwari Kuer of Tikari Raj. She had leased out her proprietary right in the said tenure and other properties to the Maharajdhiraj (plaintiff), proprietor of the Darbhanga Raj, by a Sadhaua Pataua mortgage bond which entitled the plaintiff to realise rent of the said tenure. The casa of the plaintiff was that the said proprietary right together with the leasehold interest of the plaintiff vested in the State of Bihar under the Bihar Land Reforms Act on 3-11-1951 but his right to realise the rent for the period in suit was intact. The Tekari Raj was in heavy arrears of cess payable to the Collector of Gaya and hence the proprietary right (in lease) of the plaintiff in the said tenure was attached by the Collector u/s 99 of the Cess Act. On account of that attachment, the defendants were

restrained from paying mokarrari rent and cess to the plaintiff and the plaintiff as well was restrained from realising mokarrari rent from them. The attachment was, however, withdrawn on 27-6-1955 and thereafter the plaintiff became entitled to realise the rent of the tenure. The defendants had not paid the mokarrari rent of the tenure for the years in suit and the certificate cases filed by the Collector for the realisation of the mokarrari rent were struck off. The plaintiff thus made a claim for Rs. 4741/14/- in Rent Suit No. 3 of 1957 instituted on 12-7-1957 and this appeal arises out of that suit.

2. Defendant No. 1 only contested the suit and his case was that there was no attachment of the leasehold interest of the plaintiff u/s 99 of the Cess Act. The other plea taken by him was that the suit was barred by limitation and also u/s 4(d) of the Land Reforms Act.

3. The points for determination according to the trial Court were these:

- (i) Is the plaintiff entitled to realise rent for the years in suit?
- (ii) Is the suit barred by limitation and u/s 4(d) of the Land Reforms Act?
- (iii) To what relief if any is the plaintiff entitled?

The Court discussed all these points together and came to the conclusion that the rent was no doubt due but the suit was barred by limitation. There was, however, no bar u/s 4(d) of the Land Reforms Act. The result was that it dismissed the suit on the ground of limitation. The plaintiff being aggrieved by the said dismissal filed an appeal but was unsuccessful and the appeal as well was dismissed by the Additional District Judge. Hence the plaintiff filed this second appeal out it is being prosecuted now by Pandit Lakshmi Kanta Tha.

4. There are certain facts about which there can be no controversy in view of the concurrent findings of the Courts below. It is not disputed that the plaintiff had acquired the leasehold interest under a Sadhau Pataua mortgage bond executed by the proprietress of the Tekari Raj and under that document the plaintiff was entitled to realise rent of the rent-claimed tenure towards the satisfaction of the mortgage dues. It is further clear from the findings that the leasehold Interest of the plaintiff including his right to realise rent of the said tenure was attached u/s 99 of the Cess Act in 1949 and the attachment was withdrawn on 27-6-1955. The first point urged by learned counsel for the appellant was that on account of the said attachment u/s 99 of the Cess Act plaintiff was not entitled to institute a suit and recover rent from the defendants. According to him, the right of the plaintiff to institute a suit for recovery of the rent was revived after the withdrawal of the attachment and, therefore, the plaintiffs suit was within time. The claim in the suit was for three years, that is, for 1355, 1356 and 1357 Faslis, corresponding roughly to years 1948, & 1949 & 1950. The suit for the rent of the year 1355 Fasli (1948) could have been instituted even earlier to the attachment In 1949 but it was not done so.

Learned counsel contended that the period between 1949 and 27-6-1955 (date

of withdrawal of attachment) should be excluded while computing the period of three years which was prescribed for institution of suits by a landlord against a tenant for recovery of rent in accordance with Article 2(b)(i) of Schedule III of the Bihar Tenancy Act. The attachment was withdrawn on 27-6-1955 but the plaintiff did not file this suit until 12-7-1957 and made a delay of more than two years even after the withdrawal of the attachment. In view of this inordinate delay, learned counsel for the appellant fairly conceded that even excluding the said period between 1949 and 27-6-1955 the claim for rent in respect of 1355 Fasli., was barred by time. The plaintiffs suit has been rightly dismissed for that years' rent. He, however, pressed that the claim for the next two years 1556 and 1357 Faslis was not barred by time on excluding the said period. The question thus for consideration is as to whether the plaintiff was entitled to exclude the said period while computing the period of limitation for the institution of the present suit giving rise to this appeal.

5. Learned counsel for the appellant relied on the provisions of Section 99 of the Cess Act and the notice prescribed in Schedule F which was issued under that section. Section 99 reads thus:

"Instead of proceedings as provided by the last preceding section for the recovery of any sum due under this Act, or if after so proceeding the Collector shall have failed to find property belonging to the person from whom any such sum is due, by the sale of which such sum may be fully recovered, the Collector may, if he see fit, after recording his opinion to that effect cause a notification in form in Schedule F contained to be issued for the estate or tenure in respect of which any such amount is due.

Such notification shall be published by beat of drum in every village containing any land to which such notification relates, and a copy thereof shall be posted in a conspicuous place in every such village and at the malcut-cherry of the estate or tenure to which such notification relates, if such cutcherry be found.

Every payment of rent, says and except to the Collector or some person by him thereunto appointed, made after such publication, until further order from the Collector, shall be null and void;

and the Collector may recover by any process of law for the time being in force, by which he might recover rent due to the Government from a tenant in an estate which is managed directly by the Collector, the rent then or thereafter to become due from any occupier, tenure-holder, under-tenant or raiyat on the estate or tenure in respect of which the notification has been issued, until the amount due to the Collector together with all costs, shall be satisfied, whereupon the said notification shall be revoked.

The receipt of the Collector in respect of all sums paid to him as rent, or so recovered shall be, to the extent of such sums, a valid discharge in respect of rent due by the occupier, tenure-holder, under-tenant or raiyat to whom such receipt is given. . . ."

Schedule F prescribes the Form of notice u/s 99 in these terms :

. "District of Notice u/s 99 of the Cess Act 5, 1880. The occupiers, tenure-holders, under-tenants and raiyats on estate or tenure (the estate, tenure or lands to be here clearly designated) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district or to (name of person) hereby appointed to receive the same. The Collector will grant receipts for all sums paid; and such receipts will, under the provisions of the above Act, be a valid discharge, to the extent of the sums covered by such receipts, for rent due, or hereafter to become due, as above stated by the holders of such receipts. All payments, except to the Collector, until further order, will be null and void.

(Sd.) A. B Collector."

The effect of the attachment and issue of notice u/s 99 was that the defendants in the present case were prohibited from paying rent in respect of the said tenure to the plaintiff and they had to pay rent to the Collector. Moreover, all payments except to the Collector were to be null and void. Learned counsel contended that the further effect of the attachment and the said notice was that the Plaintiff could neither institute a suit for rent against the defendants nor recover the rent from them so long as the attachment subsisted. In other words, according to him, there was an implied order restraining the Plaintiff from instituting a suit for recovery of rent during the period of attachment. Learned counsel for the appellant then referred to Section 15(1) of the Indian Limitation Act which reads thus:

"In computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded."

6. Mr. Raghunath Jha for the plaintiff appellant submitted that there being an implied order restraining the plaintiff from instituting a suit for recovery of rent while the attachment was subsisting the Plaintiff was entitled to the benefit u/s 15(1) of the Indian Limitation Act. The purpose of this subsection is to prevent any injury to a person who has been interdicted by an injunction or order from exercising his right of suit or of execution of the decree obtained by him. The period during which he was so interdicted has to be excluded, but before resorting to the provisions of this sub-section it must be shown that there was an order of stay or injunction relating to the institution of a suit or execution of a decree. If there is no such order preventing a person from instituting a suit or from applying for execution, no exclusion can be claimed under this sub-section.

The provisions of Section 15(1) have been construed and interpreted in various decisions. Learned counsel for the respondents, on the other hand, contended

that this sub-section had no application at all to the facts and circumstances of the present case and there was no order prohibiting the plaintiff from instituting a suit for recovery, of rent. He contended that the order of attachment relied upon by the plaintiff did not prevent the plaintiff from instituting a suit and in fact there was no order of stay or injunction.

He referred to *Shib Singh v. Sita Ram* ILR (1890) All 76. Sita Ram (in that case) filed a suit against Shib Singh, tenant, for recovery of arrears of rent. Rent for 1291 Fs., one of the years in respect of which rent was claimed, had been attached, by an order passed on 2-8-1886 in execution of a simple money decree held against the plaintiff Sita Ram by Kumar Daryao Singh. The order of attachment was passed u/s 268(a) of the Code of Civil Procedure, then in force. The defendant contended that the effect of the order of attachment was to bar the suit for rent so far 1291 Fasli was concerned. The Court of first instance disallowed this plea, observing that though the rent was attached in execution of a decree against the Plaintiff, he had yet a right to sue and the attachment only meant that the money should not be paid to the plaintiff. The suit was decreed and on appeal by the defendant, the District Judge concurred in the view taken by the first Court. The defendant filed an appeal in the High Court. The contention was that, by reason of Section 268 of the CPC the attachment in question barred a suit by the plaintiff for the rent which was attached. This contention was repelled and it was held that Section 268 prohibited only the recovery of the debt and the payment of it by the debtor to the creditor. The contention on behalf of the plaintiff respondent was that if the plaintiff had not brought the suit when he did, a suit subsequently brought might be barred by limitation. On the other hand, the contention on behalf of the defendant appellant was that the case would come within Section 15 of the Limitation Act.

Their Lordships held that the case did not come within the purview of Section 15 and the order of attachment was not equivalent to an injunction or an order staying a suit. In this view of the matter, the appeal was dismissed. It is important to notice that the effect of that attachment was that there was a prohibition also with regard to the recovery of the debt by the creditor from the debtor but even then it was held that the suit for rent was maintainable and (here was no order of stay which would come within the purview of Section 15.

7. Learned counsel for the respondents then referred to *Beti Maharani v. Collector of Etawah* (1895)L.R. 22 Ind App 31. The suit giving rise to that appeal was based on a bond executed on 20-6-1876 by Lala Laik Singh whose estate was under the management of the Court of Wards, in favour of the firm of Gopalji Kishen Das. The plaintiff appellant was an assignee of the bond. The defendant, the Collector of Etawah, represented the Court of Wards. The debt was payable on 1-11-1876 but no payment at all was made. The suit was instituted on 6-11-1888, more than 12 years after the date of payment. The term of limitation was 6 years and thus the Plaintiff had to prove circumstances which interfered with the running of time. One of the circumstances relied upon

by the plaintiff was that the Subordinate Judge had made an order on 17-5-1881 for attachment of the bond and the order remained in force till 7-3-1887. The Subordinate Judge had held that by the attachment made in 1881 there was a prohibition with regard to the collection of the debt in suit and the time during which the attachment was in force should be deducted in favour of the plaintiff. The High Court, on the other hand, held that there was no restraint by the order relied upon "from putting the bond in suit and obtaining a decree" and that accordingly Section 15 did not apply. On appeal by the plaintiff to the Privy Council the order of attachment was construed and it was held that the prohibition was only to this effect that the defendant was restrained from receiving payment and the person liable to the defendant was restrained from paying or delivering to the defendant any amount. It was held that an order in those terms was not an order staying the institution of a suit and there would be no violation of it until the restrained creditor came to receive his debt from the restrained debtor. The further observation was that the institution of a suit might for more than one reason be a very proper proceeding on the part of the restrained creditor, as, for example in that case, to avoid the bar by time. Their Lordships affirmed the view taken by the High Court and referred to the decision in ILR (1890) All 76.

Learned counsel for the respondents relied on AIR 1932 165 (Privy Council) , where it was held that the fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations were out of place, and the strict grammatical meaning of the words was the only safe guide. He referred to Vadamannati Bala Tripura Sundaramma alias Suidaramma Vs. Abdul Khadar, . Mockett J., observed in that case that Section 15 Limitation Act was explicit in its terms and in order to call its provisions in aid it must be shown that a suit or application for the execution of a decree had been stayed by an injunction or order in express terms.

8. Mr. Lalnarain Sinha (who also appeared for the appellant) after adopting the argument already made by Mr. Jha submitted that the defendants tenure-holders could not be relieved from the obligation of, paying arrears of rent after the withdrawal of the attachment. He referred to Bassu Kuer v. Dhum Singh ILR (1889) All 47: 15L.R. IndAp 211. The question in that case was whether a debt which at one time was due from the respondent " to one Baru Mal, whom the appellants represented, and which had never been paid, had been extinguished by lapse of time. The High Court, differing from the Subordinate Judge, had decided the point against the appellants, and had dismissed the suit brought by them for recovery of the debt. Baru Mal and Dhum Singh, bankers, had dealings together and Dhum Singh came to owe Baru Mal Rs. 33,359/3/6. It was then agreed between them that Dhum Singh should convey to Baru Mal or to his wife, Bassu Kuar, certain villages for the sum of Rs. 55,000, and that his debt should be set off against the price. On 1-9-1879 he executed and delivered to Baru Mal a deed by which he acknowledged the receipt of the whole purchase-money, and

conveyed the villages to Bassu Kuar, and he endorsed on the deed a memorandum showing that the balance only of the price, after allowing for the debt, was paid in cash. No money was actually paid. On the same day Baru Mal took away the deed and signed a letter prepared by Dhum Singh, in which he agreed to register the deed and to pay the balance of the price. But very soon afterwards he noticed that the deed was not in accordance with certain conditions for which he had stipulated, and declining to complete the purchase he demanded what was owing to him. Dhum Singh on his part insisted that the deed was in accordance with the contract and later on he brought a suit on 3-8-1880, against Baru Mal and Bassu for specific performance of the contract, praying that the deed might be registered, and that Baru Mal might be ordered to pay the balance of the Rs. 55,000 with interest, after setting off the debt of Rs. 33,359/3/6.

The Subordinate Judge held in favour of Dhum Singh and gave him a decree but on appeal the High Court dismissed the suit on 14-3-1884. Thereafter, Baru Mal renewed his demands for the payment of his debt and not being able to get it, he, in conjunction with his wife Bassu, instituted the suit on 10-9-1884 which gave rise to that appeal. Dhum Singh's defence was that Baru Mal always denied the existence of a contract and the character of the debt was never altered. He further pleaded that the suit was barred by limitation. The High Court accepted this defence and dismissed the suit as being barred by limitation. Their Lordships (of the Privy Council) reversed the view taken by the High Court and held that the decree of the High Court in the previous suit passed on 14-3-1884 brought about a new state of things and imposed a new obligation on Dhum Singh. Dhum Singh was no longer in the position of being able to allege that his debt to Baru Mal had been wiped out by the contract and that instead thereof Baru Mal was entitled to the villages. Dhum Singh was bound to pay that which he had retained in payment for his land. The facts of that case were entirely different. In the present suit or the appeal the question is as to whether the claim of the plaintiff for rent for 1356 and 1357 Faslis was barred by time. There is no question of a new obligation having arisen after the withdrawal of the attachment.

9. I would now refer to *Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others*, . The provisions of Section 15(1) of the Limitation Act were considered in that case as well. There was a shrine and tomb known as Darga Hazarat Syed Salar Mahsood Ghazi situated in the village of Singha Parasi. The plaintiffs who had preferred that appeal were members of the Waqf Committee, Darga Sharif, Bahraich. Prior to the suit giving rise to that appeal, another suit (Civil Suit No. 1 of 1940) was instituted against them with the sanction of the Advocate General for their removal and for the settlement of a fresh scheme. They were ordered to be removed by the decree of the trial Judge on 16-10-1941, but on appeal the decree of the trial court was set aside on 7-3-1946. On February 26, 1944, a notification was issued in accordance with the provisions of the United Provinces Muslim Waqfs Act (U. P. XIII of 1936) declaring the properties in suit to be a Sunni Waqf under the Act. After this

notification, the plaintiffs (appellants) instituted a suit on 18-10-1946 for a declaration that the properties in suit were not covered by the provisions of that Act inasmuch as the properties did not constitute a waqf within the meaning of that Act. There was no doubt that if the one year's limitation prescribed by Section 5(2) of that Act applied to that suit it was barred by time unless the appellants were able to invoke the assistance of Section 15 of the Limitation Act. The appellants wanted to exclude the period between October 16, 1941 and March 7, 1946, u/s 15 and the contention was that the order passed by the trial Judge on October 16, 1941 made it impossible for the appellants to file that suit until the final decision of the appeal. The further contention was that in view of that order the appellants could not interfere in any way with the affairs of the Darga Sharif as members of the Committee and they had to comply with the decree of the Court by which they were removed from the office.

Their Lordships held that this order could not be construed as an order or injunction staying the institution of the present suit and in fact the present suit was the result of the notification issued on February 26, 1944, Their Lordships observed that the relevant words used in Section 15 must be strictly construed without any consideration of equity and so construed, the order on which reliance was placed was wholly outside Section 15 of the Limitation Act. With reference to Section 15, the following observations are relevant:

"It is plain that, for excluding the time under this section, it must be shown that the institution of the suit in question had been stayed by an injunction or order; in other words, the section requires an order or an injunction which stays the institution of the suit. And so in cases falling u/s 15, the party instituting the suit would by such institution be in contempt of court. If an express order or injunction is produced by a party that clearly meets the requirements of Section 15. Whether the requirements of Section 15 would be satisfied by the prosecution of an order or injunction which by necessary implication stays the institution of the suit is open to argument. We are however, prepared to assume in the present case that Section 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation. But, in our opinion, there would be no justification for extending the application of Section 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. It is true that rules of limitation are to some extent arbitrary and may frequently lead to hardship: but there can be no doubt that, in construing provisions of limitation, equitable considerations are immaterial and irrelevant and in applying them effect must be given to the strict grammatical meaning of the words used by them (AIR 1932 165 (Privy Council))".

The decisions in ILR (1895) All 198: 22L.R. IndAp 31 and Vadlamannati Bala Tripura Sundaramma alias Suiadaramma Vs. Abdul Khadar, (relied upon by the respondents and referred to above) were considered and the views taken in

those cases were approved. The case of (1839) 15 Ind App 211 (PC) (relied upon by Mr. Lalnarain Sinha) also was referred to and their Lordships observed thus with regard to that case:

"Thus it is clear that the Privy Council was dealing with the appellant's rights to sue which had accrued to him on the dismissal of his action to enforce the terms of the agreement. It is in reference to this right that the Privy Council made the observations to which we have already referred. These observations are clearly obiter and they cannot, in our opinion, be of any assistance in interpreting the words in Section 15."

It was held that the High Court was right in taking the view that Section 15 did not apply to that suit and that it was, therefore, filed beyond the period of one year prescribed by Section 5(2).

In *A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others*, also the provisions of Section 15 of the Limitation Act were considered and I can usefully quote the following:

"The question is whether there is any well-recognized principle whereunder the period of limitation can be regarded as being suspended because a party is prevented under certain circumstances from taking action in pursuance of his rights. The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code. It is a piece of adjective or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication. It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions."

It was held that the provisions even of Section 15 did not adumbrate any general principles of substantive law nor did they confer any substantive rights on litigants and, therefore, could not be permitted to have greater application than what was explicit or implicit in them.

10. The position thus is that the provisions of Section 15(1) have to be strictly construed and the question as to whether in any particular case there is an order which operates as an injunction or as a stay of the institution of a suit or of the execution of a decree must be decided upon the terms of that order, if any, and the effect of that order. In the light of the principles laid down in these decisions, it has to be considered as to whether by the attachment in question the plaintiff was prevented from instituting a suit for recovery of arrears of rent. The notice issued u/s 99 of the Cess Act in the form prescribed in Schedule F prohibited the defendants from making any payment of rent to the plaintiff and the payments except to the Collector were to be null and void. This prohibition in terms was

against the defendants. This notice does not at all even refer to the plaintiff and there was no prohibition so far he was concerned. There was no order at all preventing the plaintiff from instituting a suit for recovery of rent. Similarly there was no injunction against the plaintiff restraining from making a claim for rent. I am, therefore, of the view that there was neither an order of stay nor of injunction to bring the case of the plaintiff within the terms of Section 15(1) of the Limitation Act. The plaintiff cannot get the benefit of the provisions of Section 15(1) and is not entitled to exclude the period during which the attachment was subsisting while computing the period or limitation prescribed in the present suit.

11. Mr. Sinha for the appellant further submitted that the plaintiff had no cause of action for the institution of the present suit while the attachment was subsisting. He referred to the provisions of Order VII, Rule 1, Clauses (e) and (g). The plaint in each suit had to contain certain particulars and the plaintiff had to state the facts constituting the cause of action and when it arose (vide Clause (e)). He had to further indicate the relief which he claimed (vide Clause (g)). Learned counsel contended that the plaintiff had absolutely no cause of action for the suit and he could not ask for a decree for arrears of rent during the period of attachment. Reliance was placed on a decision of this Court in Baidyanath Rai and Others Vs. Sm. Jay Kumari and Others, . The provisions of Section 99 of the Cess Act were considered in that case and Kanhaiya Singh. J. observed as follows:

"The power conferred upon the Collector by this section, is limited only to the realisation of the rent due from any occupier, tenure-holder, under-tenant or raiyat on me estate or tenure in respect of which the notification has been issued, and this power continues only so long as the arrears of cess remained unliquidated. The moment the amount due to the Collector together with all costs is satisfied by the realisation of rent, the notification will be immediately revoked. The holder of the estate on tenure is thus divested of the power to recover rent from the tenants. In all other respects their rights remain intact, and they remain in possession of the estate. There is no interference at all with the cultivation of their bakasht lands or with the power to develop their estate.

Thus, as a result of the attachment the Collector does not become the assignee of any interest in the estate or tenure. He does not represent the proprietary interest or in fact any other kind of interest. All that he can do is to exercise the statutory powers of realising rent from any person who holds land in any capacity within the estate or tenure no matter to whom the rent might be payable. This view finds ample support from a decision of the Division Bench of the Calcutta High Court in Haji Hafizuddin Ahmed on death Fayezuddin Ahmed and Others Vs. Natabar Chandra Saha, . If in fact there is no assignment of any interest in the estate or tenure in favour of the Collector, the only position that emerges is the position of a trustee.

To all intents and purposes, the Collector is a trustee of the owner of the estate or tenure so far as the collection of rent is concerned. The rent which he realises

by virtue of the power u/s 99 is the rent belonging to the holder of the estate or tenure. In other words, the title in the rent realised by the Collector always remains with the proprietor or the tenure-holder, as the case may be. The only power possessed by the Collector is to set off that rent against the arrears of cess. Subject to this limited power, he has not the freedom under the law to dispose of the rent so realised by him in whatever way he likes.

He has no power of disposal over the rent realised. If the rent so realised exceeds, the amount of cess due by the proprietor or the tenure-holder, the surplus amount always belongs to the proprietor or tenure-holder and is refundable to him. The Collector cannot retain with him the surplus amount."

There was no doubt the observation that the holder of the estate or tenure was thus "divested of the power to recover rent from the tenants", but the question as to whether the holder could institute a suit did not come up for consideration in that case. Learned counsel for the respondents relied on two decisions of the Calcutta High Court and the first one is in the case of *Manindra Chandra Roy Chowdhury and Another Vs. Gopi Ballav Sen and Others*, . B.K. Mukherjea, J. (as he then was) held that Section 99, Cess Act, which encroached upon the ordinary right of the landlords, must be construed strictly and the prohibition need not be carried beyond the express words used in the section and any other interpretation would lead to manifest injustice. According to his Lordship, the section itself did not make any provision under which the landlord was entitled to an exemption of the period during which the estate remained under attachment, for the purpose of counting the time for instituting rent suits and Sec. 15 Limitation Act. could not be invoked in such cases, as the notification u/s 99, Cess Act, was not, strictly speaking, either an "order" or an "injunction". His Lordship concluded that Section 99, Cess Act, did not bar the filing of the suit but at the same time the court was not competent to proceed with the suit and pass a decree so long as the notification u/s 99, Cess Act. was not revoked.

In *Haji Hafizuddin Ahmed on death Fayezuddin Ahmed and Others Vs. Natabar Chandra Saha*, also B.K. Mukherjea, J. (as he then was) relying on his own decision in *Manindra Chandra Roy Chowdhury and Another Vs. Gopi Ballav Sen and Others*, held that as a result of the attachment u/s 99. the Collector did not become the assignee of any interest in the estate or tenure as in the case of a usufructuary mortgagee nor was he put in possession of any particular estate or interest as in the case of a receiver appointed by Court or of a person who was given possession under Order 39. Rule 9, Civil Procedure Code. The property did not pass under the charge or management of the Collector by virtue of the attachment, but he could exercise the statutory powers of realising rents from any person who held lands in any capacity within the estate or tenure, no matter to whomever the rent might be payable. It was this decision which was referred to by Kanhaiya Singh, J. in *Baidyanath Rai and Others Vs. Sm. Jay Kumari and Others*, .

12. The contention of Mr. Sinha for the appellant can be put under two heads.

The first one was that there was no cause of action to the plaintiff and the second one was that the institution of a suit during the period of attachment would have been of no avail and purpose as the Court could not pass a decree in favour of the plaintiff. According to him, the plaintiff could not be forced to file suits for recovery of rent and institute suits knowing full well that he would not be entitled to a decree during that period. In other words, the right to institute a suit was suspended and it was revived only after the withdrawal of the attachment. In my opinion, this, however, is not the proper way to approach and consider the question of limitation which arises in the present case. Section 184 (1) of the Bihar Tenancy Act provides that the suits, appeal and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded. Article 2 (b) (i) of Schedule III provides that when the rent is paid in money a suit for the recovery of arrears of rent by a sole landlord or the entire body of landlords or one or more co-sharer landlords has to be instituted within three years of the last day of the agricultural year in which the arrear fell due. The period of three years has to be counted from the last day of the agricultural year in which the arrears fell due.

I have already dealt with the claim of the plaintiff for the year 1355 Fs. and held that it was barred by time. The plaintiff, however, claimed rent for the next two years 1356 and 1357 Fs." as well but the period of three years in respect of the claim for those years admittedly expired long before the institution of the present suit. It is further clear that the rent fell due for those years during the period of attachment but at that time the Collector was in a position to realise the arrears of those years. The rent for those years was undoubtedly payable to the Collector and he had a statutory right to realise the arrears of rent for those years. It is true that the defendants were prohibited from paying the rent (during the period of attachment) to the plaintiff and this also can be said that the plaintiff could not legally recover rent from them during the period of attachment. But the question of recovery should not be mixed up with that of limitation. The rents for those years were payable to the Collector but for some reason or other the Collector did not recover the rent with the result that the claim for those years was barred by time when the present suit (giving rise to this appeal) was instituted.

I take the instance of a mortgagee or a lessee or a receiver who was entitled to realise rent but did not take any step for the realisation thereof. The mortgagor or lessor or the owner of the property after the redemption of a mortgage or the expiry of the period of lease or after getting back possession of the property on discharge of the receiver respectively cannot come round and file a suit for rent which was barred by time. There was nothing to stop the running of time and the period of three years prescribed for such a suit. It cannot be said consistently that the period of limitation for a claim for rent made by the plaintiff would be different from the one which was in respect of the claim which could be made by

the Collector. There is no question of revival of a right to sue. It is not a case where no one had a right to recover rent during the period of attachment and the statute itself authorised the Collector to recover rent during the period of attachment. The position of a Collector was that of a trustee so far as the collection of rent was concerned (vide *Baidyanath Rai and Others Vs. Sm. Jay Kumari and Others*,) (already referred to) and if the Collector (the trustee) failed to realise the rent and allowed the claim for rent to be barred, the owner (plaintiff) cannot take up the position that he was entitled to recover rent which was barred by time.

13. On a consideration of the point raised by learned counsel for the parties, I am of the opinion that the claim of the plaintiff for arrears of rent for 1356 and 1357 Fs, also was barred by time and the suit has been rightly dismissed.

14. In the result, the appeal is dismissed but without costs.