

(1929) 02 CAL CK 0079
In the Calcutta High Court

Profulla Chandra Basu and Another

APPELLANT

Vs

Kshetra Lal Sinha Roy and Others

RESPONDENT

Date of Decision : 19-02-1929

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105
Limitation Act, 1963 — Article 120

Citation : AIR 1929 Cal 417

Hon'ble Judges : Pearson, J;Cuming, J

Bench : Full Bench

Judgement

Cuming, J.—These three appeals arise out of three suits in which the plaintiffs sought for a declaration that certain lands were held by them rent free under the defendant as the defendant landlord had wrongly got these lands recorded in the Record-of-Rights as liable to pay rent and then fraudulently got rent assessed for them u/s 105, Ben. Ten. Act. The plaintiffs also asked for confirmation of their possession and also for an injunction restraining the defendant from executing any decree for rent which he might obtain in certain rent suits which he had brought against them.

2. The first Court decreed the suits holding that the plaintiffs were entitled to a declaration that the lands were lakhiraj lands. That Court also confirmed their possession and issued permanent injunction on defendant 1 restraining him from realizing in execution the amounts of the decrees which he had obtained for rents for these lands. The defendant appealed to the District Court. The learned Subordinate Judge held that the suits were barred by limitation and further that they were barred by Section 109, Ben. Ten. Act. With regard to the question of limitation he held that the suits were governed by Article 120, Lim. Act, which provides a period of six years. He "held that time ran against the plaintiffs from the date of the final publication of the Record-of-Rights and hence the suits were barred by limitation. He further found that 8. 109, Ben. Ten. Act, was a bar to the present suits. The defendant had made an application u/s 105, Ben. Ten. Act, for a declaration that these lands were not rentfree lands but rent paying lands

and to have a fair rent assessed upon them. These proceedings were decided ex part against the present plaintiffs.

3. The learned Subordinate Judge held that these questions were resjudicata and the present suits were barred. As regards the question of limitation the first question decided by the learned Subordinate Judge was whether Article 120 or Article 142 or 144, Lim. Act applied to the present cases. In other words whether 6 years or 12 years rule of limitation applied to the cases. The plaintiffs had added to their declaratory suits prayers for confirmation of possession and an injunction that the defendants might be restrained from realizing rents in execution of any decrees that he might obtain in certain rent suits. With regard to the prayer for confirmation of possession the learned Subordinate Judge has held, and I agree with him, that there was no cause of action which would justify the plaintiffs in asking for confirmation of their possession, that no attempt has been made by the landlord defendant to dispossess the plaintiffs or in any way to disturb their possession. Mere bringing of suits for rent against; a party, is not an attempt to disturb his possession of the property in question. I agree therefore with the learned Subordinate Judge that the prayer for confirmation of possession is entirely unnecessary. Therefore on that account the plaintiffs cannot have the period of limitation for 12 years. The next question is whether the application for an injunction was necessary or not or indeed whether it was a prayer which the plaintiffs could ask for. What they asked for, as far as we CM see, was an injunction restraining the defendant from realizing rents in execution of any decrees that he might obtain. I do not think that it was open to the Court to grant any such injunction. The injunction which they asked for was an injunction restraining the defendant from executing any rent decrees which he might or might not obtain. He had not obtained any decree for rent. The prayer for the injunction was clearly premature and it could not be asked for or granted in the present suits. It is, therefore, clear that the period of limitation applicable to the present suits is six years as held by the learned Subordinate Judge.

4. The next point to be considered is from what point of time does time run against the plaintiffs. The respondent contends that the time runs against the plaintiffs from the date of the final publication of the Record-of-Rights in which case admittedly the plaintiffs' suits are barred. In support of this contention he relies on the case of Bajani Nath Pramanik v. Monaram Mandal [1919] 23 C.W.N. 883. The appellants contend on the contrary that time runs from the date when the defendant made an actual claim against them on the strength of the entry in the Record-of-Rights which claim they contend was made when the defendant sued them for rent on the basis of rent assessed in Section 105 proceedings and of the entry in the Record-of-Rights that the lands are liable to pay rent, and they rely upon the decision in the case of Dina Nath Das v. Rama Nath Das [1915] 23 C.L.J. 561. The question as to which decision is applicable to the present cases would depend upon the relief that the plaintiffs sought for in the plaint. I have carefully considered the plaint. There it does not appear that the plaintiffs asked for the correction of any entry in the Record-of-Rights. Their

prayer would seem to be for a declaration that they had rent free title to the properties in question. Incidentally, no doubt, they referred to the entry in the Record-of-Rights as showing that their title was not rent free. But they did not specifically ask for the correction of any entry in the Record-of-Rights. Therefore it seems to me quite clear that the decision which applies to the present cases is not the decision in the case of Bajani Nath Pramanik v. Monaram Mandal [1919] 23 C.W.N. 883 but the decision in the case of Dina Nath Das v. Iiama Nath Das [1915] 23 C.L.J. 561. That being so, I think it is quite clear that the time began to run against the plaintiffs from the date of the institution of the rent suits. Therefore so far as the question of the limitation is concerned it must be decided in favour of the appellants.

5. There remains now to be decided the second point raised by the appellants which was decided against them in the lower appellate Court, namely, that the suit was barred by the principle of resjudicata. The appellants allege that the decision in the proceedings u/s 105, Ben, Ten. Act, was obtained by fraud. The trial Court held that there was nothing to show that the decision in the proceedings u/s 105, which defendant 1 had obtained was obtained by fraud. This finding as far as can be seen, has gone unchallenged in the Court of appeal below. We must, therefore, take it that this decision in proceedings u/s 105 was not obtained by fraud as alleged by the plaintiffs. If that is so then clearly the plaintiffs' suits are barred by the principle of resjudicata. The result, therefore, must be that the appeals must fail and are dismissed with costs.

Pearson, J.

6. I agree.