

(1911) 01 CAL CK 0049
In the Calcutta High Court

Purna Chandra Chowdhury and Others	APPELLANT
Vs	
Kinkar Manjhi and Others	RESPONDENT

Date of Decision : 04-01-1911

Acts Referred:

Limitation Act, 1908 — Article 133

Citation : 9 Ind. Cas. 133

Hon'ble Judges : Chatterjee, J

Bench : Single Bench

Judgement

Chatterjee, J.—This appeal arises out of a suit for a declaration of the plaintiffs' mokatari right to certain trees standing on the bank of a bund and for recovery of possession thereof and also for the value of the branches wrongfully appropriated by the defendants.

2. The plaintiffs alleged that the trees belonged to the idol, Keshab Rai Jiu, together with the bund on which they stood. The plaintiffs obtained in Kartik 1310 a mokatari settlement of the bund and of the trees standing thereon from the present shebait of the idol. The defendants on the Strength of a purchase from the previous shebait cut down and appropriated some of the branches of the trees.

3. The defendants' purchase was attached on the ground that it was without, consideration, and that it was not binding upon the present shebait. The defence, inter alia, was that the trees had been sold by the previous shebait for consideration and for the benefit of the idol and that the plaintiffs' claim was barred by limitation.

4. The Court of first instance held that the sale of the trees to the defendants was not for the benefit of the idol and could not prevail over the lease obtained by the plaintiffs from the present shebait and decreed the suit. On appeal the learned Subordinate Judge held that though the sale was not for the benefit of the idol, the defendants were assigns for value and 12 years having passed from

the date of the sale, the claim was barred under Article 133 or 134 of the Indian Limitation Act. The plaintiffs have preferred this second appeal. A preliminary objection has been taken to the hearing of the appeal on the ground that as the claim is for movable properties, no second appeal lies, the value of the suit being below Rs. 500. I do not think however, that the objection is a valid one. "Immovable property" has not been defined in the Provincial Small Cause Courts Act (Act IX of 1887). The words have been differently defined in different Acts. In, the Registration Act and the Transfer of Property Act, standing timber, growing crops and grass are not included in "immovable property". In the General Clauses Act (Act X of 1897) "immovable property" includes land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. It was held by a Full Bench of the Allahabad High Court, in the case of Umed Ram v. Daulat Ram 5 A. 564 that standing trees are not movable property for the purposes of the, Mufussil Small Cause Court Act (Act XI of 1865). That case has been followed, even with regard to standing crops in Cheda Lal v. Mul Chand 14 A. 30. The interpretation clause of the General Clauses, Act of 1868 did not apply to Act XI of 1865, nor does the interpretation clause of Act X of 1897 apply to Act IX of 1887. But as pointed out by the Full Bench of the Allahabad High Court, the definition may appropriately be applied to the Small Cause Courts Act as being in accord with the spirit of that Act and the scope of the powers intended to be exercised under it by a Judge of a Small Cause Court. Accordingly, I overrule the preliminary objection.

5. On the merits of the case, I think the learned Subordinate Judge is right. He has found that the defendants are purchasers for valuable consideration and that 12 years having passed from the date of the sale the claim is barred, by limitation. A suit to recover possession of a debutter property alienated for value by a shebait in excess of his power must be brought within 12 years from the date of the alienation. If such a suit is brought by the successor to the shebait who made the alienation, the limitation as against him runs not from the date, of his succession to the shebaitship but from the date of the alienation. See the cases of Nilmony Singh v. Jagabandhu Roy 23 C. 536; Ram Kanai Ghosha v. Raja Sri Sri Hari Narayan Singh Deo Bahadur 2 C.L.J. 546 and the cases cited at page 551 of 2 Calcutta Law Journal. The principle laid down in the case in Ram Kanai Ghosha v. Raja Sri Sri Hari Narayan Singh Deo Bahadur 2 C.L.J. 546 just cited was followed in the case of Shama Charan Nandi v. Abhiram Goswami 83 C. 511 : 10 C.W.N. 738 : 3 C.L.J. 508. The latter case went up to the Privy Council, and the Privy Council reversed the decision but it was on the ground that Article 134, Schedule II of the Limitation Act did not apply to the case of a, lessee, who could not be treated as a purchaser under that article. See Abhiram Goswami v. Shama Charan Nandi 36 C. 1003 : 4 Ind. Cas. 449 : 10 C.L.J. 284 : 14 C.W.N. 1 : 6 A.L.J. 857 : 11 Bom. L.R. 234 : 19 M.L.J. 530. The Privy Council held that the purchaser must be the purchaser of an absolute title. The defendants" in the present case are such purchasers.

6. It is urged on behalf of the appellants that the vendor of the defendants did

not describe himself in the sale-deed as shebait of any thakur so that he did not, profess to sell in his Character as shebait. But there is nothing in Article 134 to limit its application in that way and if Article 134 does not apply, the case could come under Article 144, and the possession of the defendants, deriving title not from the idol but ignoring its rights, must be taken to have become adverse to the idol from the date of the alienation. See the observations of Banerjee, J., in the case of Nilmony Singh v. Jagbandhu Roy 23 C. 536. So that the suit is barred by limitation either under Article 134 or under Article 144 of the second Schedule of the Limitation Act, fn the case of Ram Churn Tewary v. Protap Chandra Butt 2 C.L.J. 448 on which reliance is placed on behalf of the appellants, it was held by Ghose, J., that when a person accepts a transfer of trust property with a full knowledge that the alienation is beyond the powers of the transferor and does not believe that he is acquiring an absolute title, he cannot be regarded as a purchaser within the meaning of Article 134 of Schedule II of the Limitation Act and that a suit against such a transferee would be governed by Article 144 and if it is brought by the; successor of the trustee who made the alienation, limitation as against him would run from the date when he succeeded, to the office. The case is however, distinguishable on the same ground on which it has been distinguished in the case, of Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur. 2 C.L.J. 546 cited above. It is not found in the present case that the defendants were aware that their vendor had no title to make, the transfer or did not believe that they were acquiring an absolute title. I hold, therefore, that the suit is barred by limitation.

7. The appeal is accordingly, dismissed with costs. The plaintiffs' title to the land on which the trees stood was never questioned by the defendants, and this decision will not at all affect the plaintiffs' title to the land.