

(1908) 01 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 565 of 1906

Raghu Nath Bhagat and others

APPELLANT

Vs

Syed Samad Shah and others

RESPONDENT

Date of Decision : 23-01-1908

Acts Referred:

Citation : (1908) 01 CAL CK 0020

Final Decision : Dismissed

Judgement

1. In this case the Plaintiff by reason of a transfer of the interest acquired at an auction-purchase claims to be the tenant of the Defendant and seeks to have his rights declared and for khas possession of the land in question. The suit was decreed in the first Court and the appeal before the lower Appellate Court was dismissed. The points that have been made before us are in the first place that this case is not one which can properly be tried before the Civil Court, that is a possessory suit, and by reason of sec 37 of Act I (B.C.) of 1879 is maintainable only before the Deputy Commissioner. This is a contention which does not meet with our approval. The question is whether or not this can be considered only as a possessory suit, and substantially the suit is to recover a permanent tenure in which the landlord denies the title of the Plaintiff on the ground that on the death of the previous tenant the land reverted to himself. Here is a dispute going to the root of the Plaintiff's title which seems to us to be plainly a case proper for the jurisdiction of the Civil Court. We therefore hold that sec. 37 has no application. And from that it follows that contrary to the Defendant's contention the special limitation provided in the Chota Nagpur Landlord and Tenant Procedure Act has no application.

2. We then come to the second question which is whether the present suit is barred by general limitation. There is in the judgment of the lower Court what may be taken to be a finding that the Plaintiff's predecessor in title was in possession of the land for one year after the 22nd July 1892, and this suit having been brought on 22nd July 1904 this would bring it within any period of

limitation which can apply to it. It may, however, be open to doubt whether the passage I have referred to has in fact the effect of a definite finding of fact-, and we are pressed by the consideration that it is not on the fact which seems to be so indicated that the learned Judge has based his judgment. It therefore becomes necessary to consider the cogency of the other grounds which we find in the judgment.

3. The essential feature of the case is that the auction sale of the property claimed by the Plaintiff occurred on the 7th March 1892 and that the auction-purchaser was put into possession of that property on the 22nd July in the same year. Now the article which the Appellant suggests is applicable to this case is Art. 138, i.e., where there is a suit by a purchaser of land at a sale in execution of a decree for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale. This is to be contrasted with Art. 142, and in our opinion the Judge is right in considering that the case falls under the latter rather than under the former article. Art. 138 refers more to questions between the auction-purchaser and the tenant, but the present case seems to fall under the more general scope of Art. 142. There may be a question as to how far the case referred to by the learned Judge applies to this case, but the facts of that case may be distinguished on the ground of the different relations of the parties to one another. The learned Judge has held that this suit having been instituted before the Munsif within the period of limitation is in time. When the suit came before the Munsif he found that he had no jurisdiction to entertain it and accordingly returned the papers which were subsequently filed with the Subordinate Judge. We consider that the Judge has rightly added the delay BO caused to the period of limitation under sec 14 of the Limitation Act, and that it would be putting too strict a meaning on sec. 14 of the Act taken with sec. 50, C.P.C., to hold that because no claim to that extension of the period in which to bring the action was made in the plaint therefore the case must fall. We have been referred to the case of *Jogeshwar Roy v. Rajnarain Mittra* 8 C.W.N. 168 : s.c. ILR 31 Cal. 195 (1903), where it is decided that the omission to claim any such extension in the plaint is a fatal bar to the claim. But looking at the facts of that case they seem to be sufficiently different from those of the present case as not to be applicable. The result is that this appeal must be dismissed with costs.