

(1919) 04 CAL CK 0029
In the Calcutta High Court

Rajani Nath Pramanik and Others

APPELLANT

Vs

Manaram Mandal and Others

RESPONDENT

Date of Decision : 11-04-1919

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103A

Citation : AIR 1919 Cal 151 : 53 Ind. Cas. 968

Hon'ble Judges : Newbould, J;Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for a declaration of the plaintiff's Karsha right to the lands in dispute, and also for a declaration that an entry in the Record of Rights with respect to the holding is in-correct. The plaintiff also prayed for confirmation of his possession of the lands.

2. The Record of Rights was finally published on the 16th December 1907 and the suit was brought on the 6th January 1914, i. e., more than 6 years from the date of the final publication of the Record of Rights The cause of action was stated in the plaint to have arisen on the 6th January 1908, the date of the certificate of final publication of the Record.

3. Article 120 of the Limitation Act applies to a suit for a declaration that an entry in the Record of Rights is incorrect, and the period of six years is to be computed from the date when the cause of action arose. It is contended that the cause of action arose on 6th January, the date of signing of the certificate of the final publication. Now Section 103A of the Bengal Tenancy Act lays down that "the Revenue Officer shall finally frame the Record and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the Record has been duly made under this Chapter. " Section 103B provides that a "certificate signed by the Revenue Officer stating that a Record of Rights has been finally published under this Chapter shall be conclusive evidence of such publication and every entry in a Record of Rights so published shall be presumed to be correct until the contrary is proved."

4. A certificate signed by the Revenue Officer is, therefore, conclusive evidence of the publication, but the presumption as to the correctness of the entry arises from the publication which is provided for by Section 103A.

5. It is true that the period of limitation for certain suits provided for in Chapter X of the Bengal Tenancy Act commences from the date of the certificate of the final publication of the Record of Rights [for instance, see Section 104A (2), Section 106]. But that is expressly provided for in the Act, and that fact in no way supports the contention of the appellants.

6. The Courts below, therefore, were right in holding that the plaintiff was not entitled to compute the period of limitation from the date of signing of the certificate (6th January 1908).

7. It was contended that as Section 111B provides for stay of suit for the decision of certain issues (which includes the issues raised in the present case) within three months of the certificate of the final publication of the Record, the plaintiff is entitled to a deduction of three months.

8. But the Eastern Bengal and Assam Amending Act must be taken to have come into force on the 10th June 1908, the day on which it was published in the Gazette (as the Act does not mention the date on which it was to come into force) and three months from the date of the certificate (6th January 1903) had expired before the Act came into force. Section 111B, therefore, does not help the respondent.

9. The Court of Appeal below, however, held that as there was a prayer for confirmation of possession, the suit was governed by the 12 years" rule of limitation and not by the 6 years" rule. It is contended before us that a suit for confirmation of possession is governed by Article 120.

10. It is unnecessary, however, to decide in the present case the question whether a suit for confirmation of possession is governed by Article 120 or by the 12 years" rule of limitation. The plaintiff did not allege that his possession had in any way been disturbed or threatened to be disturbed by the defendants. The only cause of action alleged in the plaint was the alleged wrong entry in the Record of Rights. In the 7th paragraph of the plaint the plaintiff stated: "For the purposes of jurisdiction the suit is valued at Rs. 40, being the market value of the disputed lands, but the suit being declaratory one "the plaintiff institutes the same on payment of a Court fee of Rs. 10 only." The Munsif treated the prayer for confirmation of possession as a prayer for "declaration of possession," and the plaintiff himself stated, as pointed out above, that the suit was a declaratory one. Under the circumstances we think the suit is governed by Article 120 of the Limitation Act.

11. The decree of the lower Appellate Court is accordingly set aside and that of the Court of first instance restored with costs of both Courts.