

(1935) 05 CAL CK 0010
In the Calcutta High Court

Ronald Duncan Cromartie and Others	APPELLANT
Vs	
Sree Sree Iswar Radha Damodar Jieu through Shebait's Guru Bhriya Chuckerburty and Others	RESPONDENT

Date of Decision : 10-05-1935

Acts Referred:

Citation : 166 Ind. Cas. 859

Hon'ble Judges : Narsing Rau, J; D.N. Mitter, J

Bench : Division Bench

Judgement

D.N. Mitter, J.—These four appeals arise out of two suits brought on behalf of a certain idol or idols for a declaration that certain leases granted by previous shebait's are not binding on the plaintiffs who are successors to the shebaitship of the said grantors of the lease as also for a declaration that a certain mortgage and sale in execution of the said mortgage is not binding on the succeeding shebait's. It will be necessary to state the cases made in the plaints of the two suits separately as there is a slight difference between them both with regard to the lands in the two suits as also with reference to the facts of the same. The case as stated in the two plaints of suit No. 68 is that Sree Sree Iswar Radha Damodar Chandra Jieu, plaintiff No. 1, is the owner of the entire 16 annas of the zemindari right of the properties mentioned in the schedule, namely, Mouza Damodarpur the boundaries of which are given in the said schedule and that the said Thakur possessed all those properties from before the date of Decennial Settlement through the shebait, one Parikshit Nayek, who is now dead, by exercising the absolute right of ownership. In course of time, so the plaintiffs allege, the shebaitship devolved. On the lines of sons and daughter's sons of the said Parikshit Nayek and according to the said settlement between the shebait's, a 6 annas share of the sheba was allotted to Jageswar Nayek deceased and his heirs and a similar 6 annas share was allotted to Hariprosad Nayek deceased and his heirs and a 4 annas share was allotted to one Radhanath Chakravarty now deceased and in accordance with this arrangement the shebait's have been possessing the properties Plaintiffs and defendants Nos. 5 to 9 in suit No. 08

claimed to be the heirs of the late Radhanath Chakravarty and possessed the properties in suit on behalf of plaintiff No. 1 as shebait with reference to 4 annas share and defendants Nos. 3 and 4 possess as shebait in respect of the other 6 annas, by being heirs of Hariprosanna Nayek, deceased. It is said that Khudiram Chakravarty who is the predecessor of the plaintiffs and Sibnarain Chakravarty the predecessor of defendants Nos. 5 to 9 each came into possession of 2 annas share as shebait in accordance with the settlements entered into between themselves, and the seba puja of the plaintiff was being carried on in the shares mentioned till now. The plaint further alleges that IJares Nath Chakravarty deceased who was the former shebait in the line of the plaintiff and defendants Nos. 5 to 9, and Kaliprosanna Nayek deceased, the former shebait in the line of defendants Nos. 2 and 4, jointly by a pottah dated Aswin 15, 1274, and the predecessor of pro forma defendants Nos. 10 to 25 by a pottah, made permanent settlement of 10 annas share of the properties mentioned in the schedule and owned by Sree Sree Iswar Radha Damodar Chandra Jieu, plaintiff No. 1, at an yearly rental of Rs. 900 and the shebait Nos. 10 to 25 made permanent settlement at a separate jama and made over possession of the said properties to defendant No. 2, the Bengal Coal Company, Limited. It is alleged that the executant of the pottahs had no right or power of making such permanent settlement and neither the debuttar properties nor the plaintiff idol derived any benefit from such settlement. The plaintiffs state further that the said permanent settlements are not binding at all on plaintiff No. 1 and they are fit to be wholly annulled and set aside. It was further alleged in para. No. 4 of the plaint that Khudiram Chakravarty, the predecessor of the plaintiff by a document dated Chaitra 23, 1310, mortgaged 2 annas share of the proprietary rights in the properties mentioned in the schedule alleging that he had mortgaged the said share and other properties to defendant No. 8 Messrs. Andrew Yule and Company. Khudiram, it is stated, died on Chaitra 20. 1319 B. S., and since that time it is said that plaintiffs Nos. 2 and 3 and the predecessors of plaintiffs No. 3. 4 to 7 became entitled to the properties in suit as shebait. On this state of facts it was prayed that a decree might be passed to the effect that defendant No. 2 did not acquire any permanent right in the properties in the suit on the basis of the aforementioned pottah, dated Aswin 12, 1274, B.S. It was further prayed that possession of the properties in suit may be given to not only the plaintiffs but also to pro firma defendants Nos. 3 to 25, on a declaration that defendants Nos. 1 and 2 had no right to possess the properties after the death of Khudiram Chakravarty. An alternative prayer was also made that if pro forma defendants Nos. 3 to 25 be found not to be entitled to get possession of the properties in suit, then an order may be passed directing that the plaintiffs do get possession in respect of their 2 annas share in the properties in suit jointly with the defendants Nos. 1 and 2. There was also a claim for mesne profile. There was an alternative prayer for rent payable in respect of the permanent settlement referred to before, for three years prior to the institution of the suit. The relationship between Parikshit Nayek and other parties to the suit is shown in the genealogical tree which is to be found printed at pages 125 to 127 of the

first part of the paper-book.

2. We will now refer to the plaint in suit No. 69 of 1925. The plaintiffs in that suit were not only the idol Sree Sree Iswar Radha Damodra Chandra Jieu but also another idol Sree Sree Iswar Gopal Chandra Jieu. That suit is based on the state of facts indicated in para. No. 4 of the plaint in the other suit, namely, that there was an unauthorized mortgage by Khudiram Chakravarty and his heirs in respect of 2 annas share in favour of Messrs. Andrew Yule and Company which eventually resulted in an appeal and which concerns the properties at Damodarpur as well as at Srinathpur. The suit had been brought for a declaration in favour of the two idols that both these properties are debuttar properties and it was beyond the competency of Khudiram to execute mortgage in favour of Messrs. Andrew Yule and Company. It is difficult to understand why the Bengal Coal Company, Limited, was made a party to that suit. These suit. It seems to us, are some what out of the ordinary, for we find cases in the book of a succeeding shebait impeaching alienation by the preceding shebait. In these two cases the position is some what complicated by the circumstance that some of the successors of the shebait who granted leases are still alive and that a suit has been instituted by the heirs of one of the shebait who is dead. This, of course, refers to suit No. 68. The successors of some of the grantors are alive who have not joined in the suit. The defence to the suits are substantially the same except with, regard to the plea of limitation which stand on a some what different footing in so far as suit No. 69 is concerned, which will be referred to later. The main defence to the two suits is that the properties are not debuttar properties at all. The plea of limitation has also been taken in both the suits. Evidence was adduced in both the suits in support of the respective contentions of the parties, and after considering the oral and documentary evidence, the Subordinate Judge has come to the conclusion that the debuttar character of the properties has been established and that the suits are not barred by the statute of limitation. The Subordinate Judge has accordingly decreed suit No. 68 in favour of plaintiff No.1 declaring the title of the shebait to that share of the land, namely, 2 annas share of the land, and directing that they do get khas possession of the land appertaining to that share jointly with pro forma defendants and defendant No.2, the Bengal Coal Company, Limited, and defendant No. 1. Messrs. Andrew Yule and Company. In suit No. 69 the decree of the Subordinate Judge runs as follows:

It is ordered and decreed that the suit is decree 1 in part in favour of plaintiff No. 2 Idol Sree Sree Gopal Chandra Jieu as represented by the (shebait) plaintiffs Nos. 2-7 in respect of their two annas share as such in respect of the plaint lands of Srinathpur Their title to that share of lands is hereby declared and they do get khas possession of the lands appertaining to that share jointly with pro forma defendants. The aforesaid plaintiffs will get costs in proportion to their success from defendants Nos. 1 and 2 and defendants Nos. 1 and 2 to bear their own costs so far as their part of the claim is concerned. Plaintiffs are permitted to withdraw their claim in this suit for mesne profits with liberty to bring fresh suit

on the sums cause of action if so advised and not barred in the meantime.

3. Against these decrees in the two suits these four appeals have been preferred. Messrs. Andrew Yule and Company have preferred appeal No. 151 against the decree of suit No. 68, and appeal No. 152 against the decree of suit No. 69. The Bengal Coal Company, Limited, have preferred appeal No. 153, with reference to suit No. 68 and appeal No. 154 with reference to suit No. 69.

4. In these four appeals by the two companies two substantial questions have been debated before us. It has been contended in the first place that the Subordinate Judge has gone wrong in reaching the conclusion that the properties are debuttar properties. The second ground taken is that the Subordinate Judge has also committed an error on the question of limitation and that he should have held that the suits were barred by limitation. We will deal with these contentions in the order in which they have been argued before us. First we take the ground that there is no evidence on which the Subordinate Judge could have founded his conclusion that the properties are debuttar. It is to be noticed in this connection that in the Record of Rights which it is stated was published sometime in 1922, the properties are described as resumed lakheraj of Sree Sree Is war Gopal Jew Thakur in the one and resumed lakheraj of the Deity Sree Sree Damodar Chandra Jieu in the other: Vide Exts. 7 and 8 printed at pages 250 and 258, respectively, of the second part of the paper book. It is true that the possessors are described as certain Nayeks and certain other persons and their respective shares are shown in the Record of Rights; yet there has been discussion before us as to the true meaning of the record. It being the contention on behalf of the appellants that the words "proprietor" really refer to the Nayeks and that the word resumed lakheraj Sree Sree Gopal Jieu, are merely descriptive of the past history of the land. We are unable to accept this contention of the appellants and we are of opinion that the Subordinate Judge is right in holding that these two entries in the Record of Rights show that the lands in the suits are resumed lakheraj of Sree Sree Gopal Jieu Thakur and Sree Sree Damodar Jieu Thakur. The plaintiffs, therefore, start with the presumption as to the correctness of the entries in the Record of Rights. We are not unmindful when we say this, of the rule of law that the Record of Rights by itself does not furnish any evidence on the question of title but it is proof of title in so far as title is based on possession; the records show that the resumed lakheraj lands were the lands in possession of Sree Sree Iswar Gopal Jieu Thakur and Damodar Jieu through the shebais.

5. Starting with this presumption in favour of the present plaintiff what we have to consider is whether the accuracy of the entries has been rebutted by the evidence such as has been furnished by the evidence in this case on behalf of the parties. It is not necessary in order to establish de debuttar that any deed of endowment should be forthcoming in every case and the course of dealings by the parties may furnish evidence of dedication in the absence of any deed. At the same time it has been pointed out by their Lordships of the Judicial Committee of

the Privy Council in the case of Konwar Doorganath Roy Ram Chunder Sen that very strong evidence should be forthcoming in order to establish the debuttar nature of the property in the absence of a deed. Bearing these observations of their Lordships of the Judicial Committee in mind we proceed to examine the evidence in the case.

6. There is no deed of endowment or dedication of the two properties as debuttar. On the other hand, there is an assertion in the mortgage which was executed by Khudiram in 1901 in favour of Messrs. Andrew Yule and Company to the effect that the properties are secular properties and had been partitioned so far back as in 1246 B.E. corresponding to 1839. That was an assertion which was made by Khudiram Chakravarty the father of the present plaintiffs. That document the mortgage deed is of course of this evidentiary value as against the present plaintiffs who are claiming in the character of shebait that it shows that there was a transaction by Khudiram in which he recited or purported to recite that the properties in the two suits were really secular properties with which he had power to deal. The document becomes evidence under the provisions of Section 13 of the Evidence Act as against the plaintiffs who claim in the character of shebait. The mortgage deed is printed at page 99 of the second part of the paper-book and is dated Chaitra 23, 1310, B.S. The passage which is material runs as follows:

And whereas an Angsanama deed was executed on Asar 27, 1246, between Jogneswar Naik and Hari Prosad Naik and Radha Nath Chakrabarty and by that the said Jogneswar Naik got 6 annas share and my father's father the said Radhanath Chakrabarty got 4 annas shares in their joint properties in their said respective shares.

This makes it clear that at any rate the father of the present plaintiffs asserted in that deed that the disputed properties of the two suits were partible secular properties with which he had power to deal. We do not put this document to any higher use than this that it is merely an evidence of the transaction u/s 13 of the Evidence Act and that there is this value to be attributed to this document that these properties were dealt with as secular properties although it may be that the evidentiary value is very very slight. The next document in point of time after the Angsanama of 1216 B.S. with reference to the earlier history is the Thakbust statement of 1855. In that statement which has been marked as Ex.5, there is an entry which is made by the Settlement Officer with reference to Sreenathpur and to the following effect: Under the name of the mehal: "Above 100 bighas lakheraj which has not been enquired into, under the names of proprietors : Hari Prosad Nayek shebait of the Deity Sree Sree Iswar Gopal Chandra Jieu share 6 annas and Raj Kumari Debya, mother of the minor KaliPrasanna Nayekshare 6 annas and Paresh Nath Chakrabartishare 4 annas of Rajpur. In Ex. 5-a printed at pages 9-11 the entry against Damodarpur is to be found the following entry: "Above 100 bighas lakheraj debuttar not investigated into." See pages 3 to 5 and 9 to 11 of the second part of the paper-book. The question, therefore, of the

debuttar character of the property was not enquired into at the time when this Thakbust statement was prepared. The result was that this led to certain proceedings for the resumption of these lands, and we find that on March 30, May 5, and May 21, 1860, (several orders were made in connection with the written statement which was put by Hari Prosad Nayek and others praying for release of lands belonging to Mouzas Damodarpur and Sreenathpur. Vide Ex. 2 printed at page 12 of the second part of the paper-book. Then it was asserted that Mouzas Damodarpur and Sreenathpur otherwise called Sankhir were really rent free lands from a long time granted in respect of Banjar Patit land from Tilak Chandra Bahadur, the Maharajadhiraj of Burdwan and having been reclaimed was brought under cultivation. The Nayeks have been carrying on the daily sheba of the deity and performing Jatra, Mahotshabas, etc., with the income thereof; in another written statement of Hari Prosad Nayek dated June 26, 1860, which is marked as Ex.1, and printed at page 15 of the second part of the paper book, the same assertion was made. The Nayeks prayed by this petition for an enquiry with regard to the debuttar character of the land and prayed that after enquiry had been made the rent should not be included in the claim of the Government and that they should be released as satisfactory arrangement had been made for the establishment of religion.

7. The enquiry was not made till sometime later when it is necessary to mention another important circumstance happened. It appears that a dispute with regard to some part of the joint lands of the Nayeks was referred to the arbitration of certain attributors, namely, Troylokya Nath Mukherjee and others and they filed a Robokari which is dated June 30, 1863, marked as Ex. Order and printed at page 17 of the second part of the paper-book, in which they gave this decision with reference to their joint lands. This document is of very great significance and throws light on the question now in controversy. It appears from the said Robokari as printed at page 25 of the paper-book that lands and jamas of the deities Sree Sree Iswar Damodar Chandra and Sree Sree Iswar Gopal Jieu respectively were mentioned not to be Damodar and Sreenathpur, but another mouza, namely, Mouza Barul Jote Bakra Nath Mondal in Hanaro Math. This document makes it clear that according to the view of the arbitrators debuttar lands were not the lands now in suit but very different lands mentioned there. It has been sought to be argued by Mr. Sarat Chandra Basu that this document has no reference whatever to Damodarpur and Sreenathpur and they were kept outside the partition by the arbitrators because they were debuttar properties. There is, however, no foundation for this contention seeing that in para. 37 of the said document a reference has been made to a certain tank at Damodarpur in which the rights of the parties were determined according to their shares as settled, namely 6 annas, 6 annas, and 4 annas respectively. The next document in point of time is the petition on behalf, of Bejoy Gobinda Nayek which has been marked as Ex. D in the case and printed at page 48 of the second part of the paper-book. That was an application which was made on Jaistha 7, 1271 B. S., corresponding to May 19, 1861. That was for a separate settlement of 6 annas

share of the entire Mouza Damodarpur in the name of the petitioner Bejoy Gobinda Nayek. This document shows at any rate that this property was being dealt with as secular property. This is also a document which goes against the contention of the plaintiffs that Mouza Damodarpur was debuttar property. We now come to another important Robokari of September 16, 1865, which is marked as Ex. G, and printed at page 52 of the second part of the paper-book. This proceeding was really the outcome of the enquiry which was asked for in the written statement of 1860 to which reference has already been made and there is nothing in this document to indicate that the Nayeks made out their claim which they alleged in their written statement of the debuttar character of the two mouzas. On the other hand, the whole of the procedure and in particular the one referred to at page 56 indicates that the property was being dealt with on the footing that this was the property which belonged to the Nayeks in distinct shares. It is true that the result of the enquiry was that jama was reduced by half and it is contended on behalf of the respondents that they, this at any rate, show that this was a rent-free grant prior to 1178-B.S. corresponding to 1771, and that, therefore, it must be taken to be a grant which existed at about that date. That may be conceded. It may be a rent-free grant but it may not necessarily be debuttar property. It seems somewhat singular that the Robokari makes no mention of the claim set forth in the written statement. If it had made any mention the debuttar nature of the property would have been established. Question was put by me to the learned Advocate for the respondents as to whether there is any evidence to show that the grant, namely the grant; from the Maharaja of Burdwan of the Mouza Damodarpur, existed. The answer given was that there was nothing to show that that grant was made. It is difficult to gather from these different Robokaris that the Court of the Deputy Collector considered that the case of the Nayek as made in the written statement has been made out. We have got a similar Robokari with regard to mouza Sreenathpur Ex. G. dated September 16, 1865, printed at page 52 of the second part of the paper-book. With reference to this Mouza there is nothing to indicate that the claim of the Nayeks regarding this property as being a property of the Thakur is established. On the other hand, the case of the plaintiffs is that the property was being treated as belonging to the Nayeks. The same fact would appear from the Robokari dated September 16, 1865, which has been marked as Ex. K and printed at page 61 of the second part of the paper book.

8. We now come next to the period of time during which the two putni pottahs which form the subject-matter of suit No, 68, came into existence. The patni puttah Ex. A, was granted on September 30, 1867, in respect of 10 annas share. Mouzali Damodarpur was granted by Paresh Nath Chakrabarti, son of Hadha Nath Chakrabarti and Kali Prosanna Laiks on of Jogeswar Laik proprietors of 4 annas, and 6 annas shares respectively. It is dated Aswin 15, 1274 B.S. and it is the alienation by this document which has been impeached in the present case. By the next document marked as Ex. A, and printed at p 91 of the second part of the paper-book which is dated December 14, 1867, the other 6 annas share-

holder granted putni lease of Damodarpur in favour of Bengal Coal Company, Limited. These two documents were executed on the express allegations made by these Nayeks that these were secular properties belonging to the Nayeks with which they were competent to deal and of which they could grant permanent leases. It would appear also that there is an outstanding fact in this case, the significance of which is very very, great, namely that between 1867 the date of the execution of the deeds and 1917 a period of 50 years the properties had been treated throughout on the footing that the properties were secular and that the Nayeks were competent to deal with them.

9. We refer to the other document which bears out what I have just stated namely that the treatment of the property for nearly half a century after the execution of the deeds had taken place has been on the footing that these two properties were secular properties. Exhibit E is an application for registration and mutation of names and is dated September 2, 1889. The application was made by Khudiram Chakrabarti and Shib Narain Chakrabarti and there it was stated that after the death of Pares Nath Chakrabarti Khudiram became entitled by inheritance to 4 annas share of the estate. These two applicants wanted to be recorded as proprietors in respect of 4 annas shares of Mohal Damodarpur. Similarly on April 5, 1904, several years after there was the mortgage which is the subject-matter of suit No. 69 (vide Ex. L. printed at p. 99 of the second part of the paper-book) executed by Khudiram in respect of 2 annas share in which a distinct allegation was made stating that the property had devolved on Khudiram in view of what is stated in the said; document as under an Angashanama deed which is said to have been executed so far back as in the year 1839. It is to be noticed that prior to the execution of this mortgage of 1901 this property had been mortgaged to a very distinguished and well-known lawyer of Burdwan Mr. Tara P. Mukherjee, now dead, who had advanced a very large sum of money and who instituted a suit in 1903 in the Court of the Subordinate Judge of Burdwan and obtained a decree for the execution. By the said decree in Ex. Case No. 39 of 1901 he attached all the mortgaged properties and got a sale proclamation issued for the realization of his debts Rs. 83,805-13-3 and costs. To avoid this sale the mortgage now in question in suit No. 69 was executed by Khudiram. No better evidence can be given in the execution than Khudiram's dealing with the property in 1904 and prior to that when the mortgage was executed in favour of Tara Prosanna Mukherji.

10. Now we come to a very important piece of evidence with regard to the rent receipts which have been executed in favour of the Bengal Coal Company, Limited, and a series of receipts which extend from 1875 to 1892 for a period of 17 years has been produced by the Bengal Coal Company, Limited. The receipts have not been printed, but we have got a tabular statement at pp. 162 and 163 of the second part of the paper-book from which it is clear that all the receipts which had been granted were on the footing that this property was secular property. There is no allegation whatever that the receipts which were given were in respect of the lands which belonged to one of the two Thakurs and that

the receipts were granted by the several Nayeks in their character as shebait. A very strong comment has been made on this point and it is said that an inference adverse to the plaintiffs should be drawn from the circumstance that no receipt had been produced for a period of nearly fifty years after 1867. The answer to this contention is that they produced the receipts sometime after the date of the pottah for nearly 17 years. It is not necessary to produce receipts for other years. The receipts from the years 1875 to 1892 distinctly show that the properties were treated as secular proprieties in the execution case. It is to be presumed that the same state, of things with reference to a deceased member (?) of a transaction must continue in the absence of any evidence to the contrary. On these broad facts we are of opinion that the judgment of the Subordinate Judge in this part of the case cannot possibly be controverted and we are of opinion that the evidence which are referred to are not sufficient to rebut the accuracy of the entry in the Record of Rights which stands in favour of the present plaintiffs. We are of opinion that the plaintiffs have failed to establish the debuttar character of the properties, and this alone is sufficient to defeat the two suits. On this ground the suits should be dismissed.

11. But as the question of limitation has been argued before us it is necessary to state our view on that question. The question of limitation in cases of the kind with which we are now dealing was considered by their Lordships of the Judicial Committee in several cases, where the position was that shebait succeeding to the preceding shebait sought to impeach the alienation in the nature of permanent mokrari lease by a previous shebait. There it has been held that suit brought within twelve years from the date when the previous shebait died would not be barred by limitation. The present case, however, falls outside the ordinary class of cases with which their Lordships of the Judicial Committee of the Privy Council had to deal. We have some doubts in our mind as to whether a suit of this character is maintainable as some of the successors of the grantors shebait's do not question the alienation seeing that they have not joined as plaintiffs in the suit. It remains therefore to consider whether a suit can lie at the instance of one of the shebait who has succeeded to one of the grantors. We do not desire to express any opinion as the question was not raised in the Court below. We simply indicate the doubt which is passing in our mind.

12. Having regard to the decided cases, in so far as the leases which form the subject-matter of suit No. 68 are concerned, it is difficult to say that the suit is barred by limitation seeing that the suit had been instituted by Khudiram, successor in the shebaitship within twelve years of his death. The cases are well-known and they have been referred to by the bar; See the case of AIR 1933 75 (Privy Council) as also the last case on the point, namely, the case of AIR 1935 44 (Privy Council) where it has been pointed out that in an ordinary case when one succeeding shebait impeaches alienation by a previous shebait the period of limitation would run from the date of the death of the alienating shebait. We therefore think that so far as suit No. 68 is concerned, the learned Subordinate Judge is right in holding that the suit is not barred by limitation, except with

regard to 2 annas share of Mouzah Damodarpur which passed by the mortgage sale. This brings us to the question of limitation raised in the other suit No. 69. With regard to this suit also we think that the suit must fail on the ground of limitation. The sale in this case took place in execution of the mortgage of 1912 and admittedly the present suit was brought beyond 12 years of that date. This case is not to be governed by the rule of limitation laid down with regard to the setting aside of the alienation in the nature of a permanent mokrari lease by a shebait. This distinction was observed and recognized by their Lordships of the Judicial Committee of the Privy Council in the case of Subbaiya Pandaram Mahammad Mustapha Maracayer It would be right if we reproduce what was said by Lord Buckmaster in this connection as reported at p. 299 of the said report:

A further argument has been put forward to the effect that the period of limitation begins to run afresh as each new trustee succeeds to the office and in support of that view reliance is placed on *Ishwar Shyam Chand Jiu v. Bam Kanai Ghose* 38 I.A. 76 : 10 Ind. Cas. 683 : 15 C.W.N. 417 : 9 M.L.T. 448 : 8 A.L.J. 528 : 13 B L.R. 421 : 14 C.L.J 238 : (1911) 2 M.W.N. 281 : 21 M.L.J 1145 : 38 C. 526 (P.C) and *Vidya Varuthi Tirtha v. Dalusami Ayyar* 48 I.A. 302 : 65 Ind. Cas. 161 : (1921) M.W.N 449 : 41 M.L.J. 346 : 44 M 831 : 3 U.P.L.R. (P.C) 62 : 15 L.W. 78 : 30 M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 B L.R. 629 : 20 A.L.J. 497 : AIR 1922 P.C. 123 (P.C) but those authorities do not assist the appellant. In each case they relate to the effect of an attempt, on the part of a trustee to dispose of the property, by a permanent mukarrari lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life and a grant made for a, longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he as named the office. Such an argument has no relation to the case where as here property has been acquired under an execution sale and possession retained throughout.

13. The same view has been taken in the more recent case of AIR 1933 75 (Privy Council) where Lord Russell of Killowen observes as follows:

The same view is apparent in a later judgment of the Board *Subbaiya Pandaram v. Mohammad Mustapha, Maracayar* 48 I.A. 302 : 65 Ind. Cas. 161 : (1921) M.W.N 449 : 41 M.L.J. 346 : 44 M 831 : 3 U.P.L.R. (P.C) 62 : 15 L.W. 78 : 30 M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 B L.R. 629 : 20 A.L.J. 497 : AIR 1922 P.C. 123 (P.C). The disposition in that case was a sale in 1898 of land devoted in charitable purposes, under an execution decree against the person who was the trustee of the charity. In the year 1913 the person who was the trustee of the charity sued to recover the property from the purchaser at the execution sale, or those claiming under him. It was held, not unnaturally, that the purchaser's possession was adverse from the date of the sale, but in delivering the judgment of the Board, Lord Buckmaster, after referring in *Ishwar*

Shyam Chand Jiu v. Ram Kanai Ghose 48 I.A. 302 : 65 Ind. Cas. 161 : (1921) M.W.N 449 : 41 M.L.J. 346 : 44 M 831 : 3 U.P.L.R. (P.C) 62 : 15 L.W. 78 : 30 M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 B L.R. 629 : 20 A.L.J. 497 : AIR 1922 P.C. 123 (P.C) said: "In each case they relate to the effect of an attempt on the part of the trustee to dispose of the property by a permanent mukarari lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life, and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse.

14. It appears from these authorities that the true rule deducible in cases where properties are sold in execution of a decree is, that period of limitation will run from the date of the sale and the suit brought after 12 years from this date of sale must be held to be barred by limitation. Mr. Basu sought to distinguish this case on the ground that the Judicial Committee case was an execution case with reference to a money decree and that the present case is a Case of sale in execution of a mortgage decree and that the principle laid down by their Lordships of the Judicial Committee in the case in Subbaiya Pandaram v. Mohammad Mustapha Maracayer 48 I.A. 302 : 65 Ind. Cas. 161 : (1921) M.W.N 449 : 41 M.L.J. 346 : 44 M 831 : 3 U.P.L.R. (P.C) 62 : 15 L.W. 78 : 30 M.L.T. 66 : 3 P.L.T. 245 : 26 C.W.N. 537 : 24 B L.R. 629 : 20 A.L.J. 497 : AIR 1922 P.C. 123 (P.C) cannot be applied in the present case. We are unable to accept this contention seeing that the words used by their Lordships of the Judicial Committee in the two cases already referred to are very general and have application to the cases of all execution sales. We therefore hold that suit No. 69 must be decreed further in addition to what has been done in the Court below.

15. It is pointed out on behalf of the appellants that suit No. 68 in so far as it concerns the two annas share of Mouzah Damodarpur is also barred by limitation for the reason which we have stated with reference to the mortgage sale in favour of Messrs. Andrew Yule and Company. The Bengal Coal Company holds under Messrs. Andrew Yule and Company.

16. The result is that these four appeals are allowed. Suits Nos. 68 and 69 are dismissed. The appellants must get their costs throughout, that is, both in this Court and the Court below. One set of costs is allowed for all these four appeals. The hearing fee is to be divided equally between the two sets of appellants.