

(1928) 11 CAL CK 0007
In the Calcutta High Court

Sati Prosad Garga and Others

APPELLANT

Vs

Gobinda Chandra Shee

RESPONDENT

Date of Decision : 28-11-1928

Acts Referred:

Bengal Tenancy Act, 1885 — Section 184
Limitation Act, 1963 — Section 14

Citation : AIR 1929 Cal 325

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

Bench : Full Bench

Judgement

Cuming, J.—In the suit out of which this appeal arises the plaintiff sued for possession of some eight bighas of land which was specified as settlement dags 823, 918, 919 and 700 and further for a perpetual injunction restraining the defendants from interfering with the plaintiff's possession after a declaration that the entry in the Record-of-Rights is erroneous, ultra vires and not binding on the plaintiff.

2. The plaintiff's case is briefly this: That the lands in dispute so far as dags 823, 918 and 919 are concerned were taken settlement of by some five persons so long ago as July 1830. One of these five persons was one Gaya Narayan Shee, the grandfather of the plaintiff ; that the plaintiff inherited the land in suit which formed part of the demised land as heir of his grandfather, and that he and his predecessors in-interest had been in possession all along. With regard to the dag 700 he states that he purchased it from Madhab Kandar in 1316 and had been in possession of the same since that date, and that he had executed a kabuliat in favour of the Government Khas Mehal Department as this dag 700 was found to be included in the Government Khas Mehal being described as bund surplus land of the Government. The defendants resisted his claim and contended that the lands in suits so far as dags 823, 918 and 919 were concerned were recorded in their names in the Settlement Record-of-Rights. They contended that the amalnama was not genuine and further that the dag 823 918 and 919 had not been included in the amalnama. With regard to dags 700 the defendants seemed

to contend that the Government had no title to any portion of dag 700. They further argued that the suit was barred by limitation the period of limitation applicable to the case being the special law of limitation provided by Article 3, Schedule 3, Ben. Ten. Act. The trial Court and also the lower appellate Court found all the issues in favour of the plaintiff and decreed the suit. The defendants have appealed to this Court.

3. The first point which has been urged by Mr. Bose who appears on behalf of the appellants is that the suit is barred by limitation. He would maintain that the period of limitation provided for the suit is that provided by the Bengal Tenancy Act and that Section 184, Ben. Ten. Act, would exclude this suit from the operation of Section 14, Lim. Act. In order to understand Mr. Bose's point clearly it would be necessary to state a few more facts. The suit was instituted on 8th December 1922 in a Munsif's Court. The period of limitation would normally expire on 22nd November 1923. Therefore apparently at the time when the suit was instituted in the Munsif's Court at Tamruk it was within time. A question, however, was raised by the defendants as to the valuation of the suit. After an enquiry made by the Munsif it was found by him that the value of the suit was beyond his pecuniary jurisdiction and on 22nd December 1923 he returned the plaint to the plaintiff to be presented before the proper Court. On 2nd January next it was presented in the Court of the Subordinate Judge at Midnapore. I may here (sic) that the civil Courts were closed on 23rd December and remained closed up to 2nd January. 2nd January was the reopening day of the civil Courts. It will be seen therefore that on the day when it was presented in the Court of the Subordinate Judge at Midnapore that suit was out of time-time having expired on 22nd November 1923. The plaintiff, however, called to his aid Section 14, Lim. Act, and contended that he was entitled to exclude the period during which he had been prosecuting in good faith his suit in the Court of the Munsif at Tamruk. Both the lower Courts have found that he was entitled to exclude this period and hence his suit was within: time, Mr. Bose admits that if the plaintiff is entitled to exclude this period the suit is within time. But Mr. Bose contends that Section 14, Lim. Act, does not apply and he is not entitled to exclude the period. Mr. Bose relied on Section 184, Ben. Ten. Act. Section 184 states:

that the suits, appeals and applications specified in Schedule 3 annexed to this Act shall be instituted and made within the time prescribed in that schedule for them respectively ; and every such suit or appeal instituted and application made after the period of limitation so-prescribed, shall be dismissed, although limitation has not been pleaded.

4. Mr. Bose would argue from this that Section 14, Lim. Act, has no application. Section 184, Ben. Ten. Act, however, to my mind provides the period of limitation. Section 14, Lim. Act, provides not the period of limitation but means to compute that period which to my mind is an entirely different thing. A reference to Section 185, Tenancy Act, will I think made it quite clear that Section 14, Lim Act, does apply. Section 185 states that (1):

Sections 7, 8 and 9, Lim. Act, 1877 shall not apply to the suits and applications mentioned in the last foregoing S.(2) subject to the provisions of this chapter, the provisions of the Indian Limitation Act 1877 shall apply to all suits, appeals and applications mentioned in the last foregoing section.

5. Now, it seem³ to me that if it were the intention of the legislature that Section 14 would not apply to suits &c, mentioned in Section 184, Ben. Ten. Act, the legislature would have stated so because it specifically excludes Section 7, 8 and 9 and if it desired to exclude Section 14 nothing would have been easier than to add this section to the list of sections which were excluded and I cannot see how Section 184, Ben. Ten. Act, excludes the application of Section 14, Lim. Act. The point is made still clearer by a reference to Section 29, Lim. Act. This section has been amended recently in 1922. It provides that

where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by Schedule 1, the provisions of Section 3 shall apply as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law (a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

6. As I read this section, Section 4, Sections 9 to 18 and Section 22 would apply unless they are expressly excluded by any special or local law. By the expression "expressly" I think it is meant that express reference is made to the specific section in the Act; and that unless such reference is made to the section and by that reference they are expressly excluded then they would apply. I have no hesitation in coming to the conclusion "that Section 14, Lim. Act does apply to the present suit and in view of the facts the plaintiff is clearly within time Mr. Bose has further contended with regard to the question of limitation that it has not been found that the plaintiff was in good faith prosecuting the suit in the Munsiff's Court. Whether a person is acting in good faith or bad faith is clearly a question of fact and there is on this point a specific finding by the learned Judge: see p. 14 of the paper book lines, 5 and 6 where the learned Judge states:

In such circumstances it cannot be said that the plaintiff in bad faith gave a lower price.

7. Reading this portion of the judgment I think it is quite clear that the learned Judge means to say that the plaintiff gave the price that he did in good faith. Mr. Bose then proceeds to contend further that the learned Judge in deciding this point had not got in his mind the meaning of the expression "good faith." "Good faith" is specifically defined in the Limitation Act as follows:

Nothing shall be deemed to be done in good faith which is not done with due care and attention.

8. Now the learned Judge was dealing with a section of the Limitation Act and there is no doubt that the expression "good faith" is used with a particular meaning in this Act. But we must presume that the learned Judge in dealing with the expression "good faith" as used in the Limitation Act was perfectly well aware of the particular definition of the expression "good faith" which will be found in the Limitation Act and, therefore, when he found that the plaintiff prosecuted his suit in good faith he found that he prosecuted it with due care and attention.

9. Mr. Bose has then argued that the learned Judge has wrongly placed the burden of proof on the defendant. At p. 14, line 45, of the paper book the following statement of the learned District Judge appears:

The lands in suit are claimed by plaintiff as part of his holding defendants must prove according to the ruling in *Shama, Sundari Dassee v. Raj Behary Dhur* 3 C.W.N. 763 that it is out side the plaintiff's jote.

10. Mr. Bose contends that in so doing the learned Judge has placed the burden of proof on the wrong party. He contends, I think rightly, that it was for the plaintiff to prove that the land lay within his jote and not for the defendant to prove that it lay outside. I do not, however, think that this is really material. No doubt the learned Judge was wrong in stating that the burden of proof lay on the defendants. But as has been pointed out by their Lordships of the Judicial Committee of the Privy Council the question on whom the burden of proof should fall is of very little importance when evidence have been gone into by both sides. When one reads the judgment it will be seen that the learned Judge really put the burden of proof on the plaintiff. He was aware as would be quite clear from line 36 at p. 15 of the paper book that the Record-of-Rights was in favour of the defendants and it was for the plaintiff to rebut the presumption arising from the entry in the Record-of-Rights. He deals with the evidence on that footing and finally finds that the presumption of the Record-of-Rights has been rebutted.

11. Mr. Bose next argues that the learned Judge has not considered whether the lands in question are covered by the amalnama. As far as I can see reading the judgment of the learned District Judge it was not disputed in the lower appellate Court that the lands in dispute were covered by the terms of the amalnama. So far as the amalnama was concerned the only question raised before the learned District Judge was whether the amalnama itself was or was not genuine and it was not disputed before him whether the lands in dispute were or were not covered by it. I do not think therefore that the finding of the learned Judge that the three plots 823, 918 and 919 belong to the plaintiff has been vitiated by any erroneous proposition of law that he put before himself and apparently adopted with regard to the burden of proof.

12. Mr. Bose lastly argued that dag 700 has not been properly dealt with and that the learned Judge disposed of dag 700 in two lines. No doubt the learned Judge has not dealt with dag 700 at any length as he has done with regard to the other three dags. The explanation is I think that" dag 700 is about a cottah

in area while the area of the remaining three dags amounts to some eight bighas; it is quite possible that the parties did not attach very much importance to what amounts to 1/16th of the whole and very few arguments were addressed to the learned Judge. However, he has held that the plaintiff has proved his possession and his purchase from Madhab Kandar. This purchase was in 1316 more than 12 years before the institution of the suit. I do not think that it is necessary to find any thing further.

13. The result is this appeal must fail and is dismissed with costs.

Mallik, J.

14. I agree.