

(1938) 11 PAT CK 0033
In the Patna High Court

Shaikh Reyasat and Others		APPELLANT
	Vs	
Gopi Nath Missir and Others		RESPONDENT

Date of Decision : 22-11-1938

Acts Referred:

Bihar Tenancy Act, 1885 — Schedule 3, 184
Chotanagpur Tenancy Act, 1908 — Section 139A

Citation : AIR 1939 Patna 122

Hon'ble Judges : Harries, C.J;Agarwala, J

Bench : Full Bench

Judgement

Harries, C.J.—This is a defendants' second appeal against concurrent decrees of the Courts below decreeing the plaintiffs' claim for arrears of bhaoli rent due for the years 1339 to 1342-F. It was contended inter alia on behalf of the defendants that the claim was barred by limitation. Both the lower Courts however came to the conclusion that the suit was not barred and accordingly decreed the plaintiffs' claim in full. Before us it has been contended by the appellants that the claim for rent with respect to the years 1339 and 1340 E is barred by time, though it is conceded that no such defence can apply to the claim for rent due for the years 1341 and 1342F. Previous to the year 1934, a landlord had three years in which to bring his suit. The matter was governed by Section 184 and Schedule III, 2(b)(ii) Bihar Tenancy Act. In the year 1934, an Amending Act was passed and this period of three years was reduced to one year. The time from which the period began to run was the same in both these Acts, namely the last day of the agricultural year in which the arrear fell due. The Amending Act of 1934 received the assent of the Governor-General on 14th November 1934, and it was provided that it should come into force at such time as was provided by an order to be made under the provisions of the Act. By an order made under the Act this provision relating to limitation came into force on 10th June 1935. It is clear therefore that all persons in this province were given a period from 14th November 1934 to 10th June 1935 to bring their suits, which, if not brought within that period, would be barred by the Amending Act.

2. It has been argued by Mr. Naqui Imam on behalf of the defendant-appellants that this Amending Act applied to all suits instituted after 10th June 1935, whether the cause of action had accrued or not before that date. On behalf of the respondents it has been contended that this Amending Act of 1934 cannot have the effect of taking away rights which had accrued before that Act came into force. This case came first before a single Judge, who has referred it to a Bench, because there is a conflict of opinion concerning the matter in this Court. In *Babu Rameshwar Prasad Singh and Another Vs. Mangar Kahar and Others*, . Rowland J. held that where a statute introduces a shorter period of limitation, suits instituted after the amendment in respect of cause of action accruing before such amendment will be governed by the amending law, the rule ordinarily applicable being the law which is in force at the time of the institution of the suit, and this principle will apply especially where there is an interval of time between the passing of the new Act and its coming into force. Consequently the shorter period of limitation of one year will apply to a suit for produce rent, the cause of action for which accrued before the passing of the 1934 Act amending the Bihar Tenancy Act. This is a case upon the statute with which we are now concerned. Rowland J. stresses the fact that there was an interval of time between the passing of this Amending Act and the date upon which it came into force. In *Badri Narayan Singh and Others Vs. Ganga Singh and Others*, another case on the effect of this Amending Act, Courtney-Terrell C.J. came to a different conclusion. He held that a new law ought to be construed so as to interfere as little as possible with vested rights, and a statute is therefore not to be construed with greater retrospective operation than its language rendered necessary. Accordingly he held that the shorter period of limitation of one year as embodied in the new Bihar Tenancy Act was not applicable to a suit for produce rent, the cause of action for which had accrued before the passing of the new Amending Act. There can be no question whatsoever that this case is in direct conflict with the case decided by Rowland J. It is clear however from Courtney-Terrell C.J.'s judgment that it was not present to his mind that there was an interval of time between the passing of the Bihar Tenancy Amending Act of 1934 and the date upon which it came into force, namely 10th June 1935. At page 734 he observes:

Applying these principles of construction to the Bihar Tenancy Act and to the facts of this case, it becomes manifest that the period of limitation prescribed has not affected the vested right of the plaintiff who formally proceeded to sue in respect of the year 1340; and indeed upon general principles of justice this view has the further justification that by the time the Act was published, that is to say on 14th November 1934, the period of limitation which the Judge has held to be applicable would have already expired, with the result that the plaintiff's right of action would have been destroyed without notice to him.

3. In short, it is clear that the late learned Chief Justice was of opinion that the Amending Act of 1934 put an end to landlords' rights the moment it was passed, though clearly this was not so. In my judgment, this case, *Badri Narayan Singh and Others Vs. Ganga Singh and Others*, is no authority on the facts of the

present case, because the learned Chief Justice wrongly assumed that the Amending Tenancy Act came into force on the day upon which it was passed. The point under consideration was considered at considerable length in *Manjhoori Bibi v. Akel Mahumed* 17 C.W.N. 889. In that case the statute which amended the law of limitation came into force immediately. The learned Judges of the Calcutta High Court held that such a statute had no retrospective effect and could not affect rights which had become vested before it was enacted. Mookerjee J. observed:

In my opinion, the cardinal and fundamental point in the case before me is that the Eastern Bengal and Assam Tenancy Amendment Act of 1908 came into operation the very moment it became law: consequently, if it were taken to affect preexisting causes of action, the effect would be absolutely to bar at once all actions where the cause of action had accrued more than the limited time before the statute was passed.

4. A little later in his judgment he observed:

On the other hand where a new statute of limitation reduces the time previously allowed for commencement of the suit, but does not come into operation forthwith and allows a reasonable time for the enforcement of existing causes of action the Court will not hesitate to hold that the statute may affect causes of action already accrued in the same manner as those accruing after its passage.

It is clear from these last observations that the learned Judge recognized that there was a great difference between a case where a statute amending the law of limitation came into force immediately and the case where a period of time was given between the passing of the Act and the date upon which it came into force during which suits could be brought which would otherwise be barred by the Amending Act. This distinction has long been recognized in England and there appears to be no difference between the English law and Indian law upon this point. In *Queen v. Leeds and Bradford Ry. Co.* (1852) 21 L.J.M.C. 193 a Bench consisting of Lord Campbell C. J., Wightman, Erie and Crompton JJ., had to consider the point which is now before us. A statute which did not come into operation until six weeks after the date upon which it was passed provided that where no time was limited for making complaints or laying in formations under Acts of Parliament, such complaint should be made and such information should be laid within six calendar months from the time when the matter of such complaint or information arose.

5. The Bench held that this Act had a retrospective operation and invalidated such an order where the complaint was not made within six calendar months from the time when the damage complained of occurred, although the act complained of was committed before the Act came into force. At page 195 Lord Campbell C.J. observed:

There is no doubt that if the subject-matter of complaint in this case had arisen subsequently to the passing of the 11 and 12 Vict, c., 43, the provision contained

in Section 11 would have applied. Then comes the question, whether the act has a retrospective operation. If the act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the legislature not to give it a retrospective" operation but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the Legislature has provided that as the period of time within which proceedings respecting antecedent, damages or injuries might be taken before the proper tribunal. Had the time allowed been six months, instead of six weeks, it could hardly have been said that the act would not have applied to all cases happening before the Act was passed, and we cannot measure the intention of the Legislature-by the quantum of the time allowed. A certain, time was allowed before the Act was to come into operation and that removes all difficulty.

6. Wightman, Erie and Crompton JJ. agreed with this view. It may be observed that this case was overruled on another point in *R. v. Edwards* (1885) 13 Q.B.D. 586 but there can be no question that the statement, of law relating to the effect of an amending, statute remained unaffected. In this case the construction placed upon the statute though fatal to the enforcement of a vested right by shortening the time for enforcing it, did not in terms take away any such right. The Court appears to have thought that the general rule of construction against giving a statute a retrospective effect had only a limited application to cases such as the one before us. The question of the effect of law amending period of limitation, was also considered by their Lordships of the Privy Council in *Soni Ram v. Kanhaiya Lal* (1913) 35 All. 227 . A suit was brought by the appellant on 4th March 1907, against the respondents for the redemption of a mortgage, dated 2nd January 1842, made between the respective predecessors-in-title of the parties and in which no date for redemption was specified. Acknowledgments of the mortgagor's right had been made by the widow and daughter of a former mortgagee, a predecessor in title of the respondents, which, the appellant contended, extended the period of limitation. Their Lordships held that the law of limitation applicable to the case was not Act 14 of 1859, the law in force at the date of the acknowledgements, but Act 15 of 1877, which was in force at the time of the institution of the suit. This case is not precisely in point; but it is important because it recognizes that amendments of statutes dealing, with limitation may well have a retrospective effect, though giving the statute such an effect would affect accrued rights. The point before us was considered by a Full Bench of the Calcutta High Court in *Gopeshwar Pal Vs. Jiban Chandra Chandra*, . The Full Bench held that where the application of the provisions of an Amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases. It was however recognized that where a period of time elapsed between the passing of the Act and the date upon which it came into force different considerations would arise At p. 1141 it is stated :

Here the plaintiff at the time when the Amending Act was passed had a vested

right of suit, and we see nothing in the Act as amended that demands the construction that the plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the Amending Act. It is not (in our opinion) even a fair reading of Section 184 and Schedule 3, Bengal Tenancy Act, as amended to hold that it was intended to impose an impossible condition under pain of the forfeiture of a vested right, and we can only construe the amendment as not applying to cases where its provisions cannot be obeyed. The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate. There are thus two positions: where in accordance with its provisions a suit could be brought after the passing of the amendment, it may be that the amendment would apply, but where it could not, then the amendment would have no application.

7. In the present case a suit, such as the present, could well have been brought after the Amending Act came into force. In fact, landlords were given eight months in which to bring suits which would otherwise be barred by shortening the period of limitation. On behalf of the respondents reliance is placed upon the case in *Chote Lal Nand Kishore Nath Shah Deo Vs. Tula Singh and Others*, in which it was held that Section 139A, Chota Nagpur Tenancy Act, does not bar the institution of a suit by a tenant against his landlord for possession in a Civil Court where the cause of action has arisen before the introduction of the said Section by the Amending Act of 1920 and the result of applying the new provisions would be to deprive the plaintiff of his right of action altogether. This case is no authority for the respondents. In the course of the judgment there is nothing to suggest that the learned Judges considered the effect of a period of time being given between the passing of an Amending Act and the date upon which it was to come into force. The Bench which decided this case, emphasised the rule that an Act should not be given a retrospective effect unless its terms are clear. Accrued rights must be protected unless it was clearly the intention of the Legislature that such rights should be interfered with. There can be no doubt that such is a correct statement of the law; but where it is clear that the Legislature intended to take away accrued rights, then such an effect must be given to the statute. In my view where in an act amending and shortening a period of limitation, a period of time is given between the passing of the Act and the date upon which it is intended that it should come into force, such an act must be given a retrospective effect. The Legislature have given all persons affected by the Amending Act a period of time to bring their suits. If suits are not brought within such period, then the amending statute must be held to bar them. Such is the view held in English Courts and such is the effect of authorities in Courts in India.

8. For the reasons which I had given, I hold that the plaintiffs' claim in the case for rent due for 1339 and 1340 F was barred by limitation. I would therefore allow this appeal in part and modify the decree of the Court below which must be a decree for rent due in 1341 and 1342 F only. The damages must be calculated

upon the rent due for those two years only. In all other respects the decree will remain unaffected. Each party will bear their own costs of this appeal and of the proceedings in both the Courts below.

Agarwala J.

9. I agree. The law of limitation being a branch of the adjectival law, the statute of limitation applicable to a particular suit or legal remedy is that which is in force at the date when the suit is instituted or the remedy is sought and not the statute which was in force at the time of the transaction or vesting of the cause of action on which the suit or remedy is based. If authority is required for that proposition, it will be found in the decision of the Privy Council in *Soni Ram v. Kanhaiya Lal* (1913) 35 All. 227. That was a suit instituted in 1907 for redemption of a mortgage. The plaintiff sought to meet the defence of limitation by setting up certain acknowledgments and relied on the fact that they had been given when the Limitation Act of 1859 was in force. The defendants, on the other hand, contended that the suit was governed by the Limitation Act of 1877.

10. Their Lordships of the Privy Council affirmed the view of the High Court of Allahabad that the "law of limitation applicable to a suit or proceeding is the law in force at the date of institution of the suit or proceeding, unless there is a distinct provision to the contrary. A difficulty suggests itself when as in the present case, the period of limitation is shortened after the cause of action has arisen and before a suit on that cause has become barred under the unamended law. Such a case, which involved the construction of the statute with which we are concerned in the present appeal, came before the late Chief Justice sitting singly in *Badri Narayan Singh v. Ganga Singh* A.I.R (1937) Pat. 605 in which his Lordship held that the longer period of limitation applied, that is to say, that the amendment with which we are concerned is not retrospective. A different view was taken by Rowland J. in *Babu Rameshwar Prasad Singh and Another Vs. Mangar Kahar and Others*, where the distinction was referred to between a case where an Amending Act comes into force on the day on which it is passed and a case where there is an interval of time between the date on which the Act is passed and the date on which it comes into operation.

11. In the case which came before the late Chief Justice the opposite party was not represented and his Lordship appears not to have noticed that the Amending Act did not come into operation immediately. In *Gopeshwar Pal Vs. Jiban Chandra Chandra*, a Special Bench considering an amendment of the period of limitation provided in the Bengal Tenancy Act, which came into force as soon as it was enacted, observed at p. 1141:

The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate. There are thus two positions: where in accordance with its provisions a suit could be brought after the passing of the amendment, it may be that the

amendment would apply, but where it could not, then the amendment would have no application.

12. That appears to be in consonance with the law as stated in England by Lord Campbell C. J. *Queen v. Leeds and Bradford Ry. Co.* (1852) 21 L.J.M.C. 193. The facts of that case were that two Justices acting under statute 8 & 9 Viet., c. 18 had awarded a sum of money to one Edmondson as compensation for damage done to his land by the construction of the defendants' railway. The damage in respect of which the compensation had been awarded was done in 1846 and 1847.

13. The complaint was made in 1850. In the meanwhile the statute 11 & 12 Viet, c. 43 had been enacted, Section 11 of which provides that where no time is limited for making complaints or laying in formations under Acts of Parliament, such complaint shall be made and such information laid within six months from the time when the matter of such complaint or information arose. This statute did not come into operation until six weeks after it had been passed, that is to say until 2nd October 1848. The question therefore arose whether the six months period of limitation prescribed by the latter Act operated to bar the claim made by Edmondson on the basis of the former Act. Lord Campbell C.J. held that the Act was retrospective, in language which has been quoted in the judgment of my Lord the Chief Justice.