

(1907) 03 CAL CK 0020
In the Calcutta High Court

Shyama Sundari Dasya

APPELLANT

Vs

Mahomed Zarip and Others

RESPONDENT

Date of Decision : 19-03-1907

Acts Referred:

Land Registration Act, 1876 — Section 89
Limitation Act, 1963 — Article 14

Citation : 3 Ind. Cas. 693

Hon'ble Judges : Mookerjee, J

Bench : Single Bench

Judgement

1. The plaintiffs-respondents sued for declaration of their title to certain specified shares in five villages, mentioned in the plaint, alleged by them to be included in zamindary of Mir Abdullah, forming Taulk No. 87 of the Collectorate of Mymensing. The Courts below have made a decree in favour of the plaintiffs. The second defendant has appealed to this Court and on her behalf the decision of the Subordinate Judge has been challenged substantially on two grounds, namely, first that the suit is barred under article 14 of Schedule II of the Limitation Act, and secondly, that the Subordinate Judge has erred in relying upon an entry made under the Land Registration Act as affording any evidence "upon the question of title.

2. In support of his first contention, the learned Vakil for the appellant has pointed out that the order under the Land Registration Act by which the application of the plaintiffs to have their names registered was refused, was made on the 20th February 1900, but the present suit was not instituted till the 17th March 1902. Upon these facts, it has been argued that the suit is barred under article 14 of Schedule II of the Limitation Act. That article provides that a suit to set aside any act or order of an officer of Government in his official capacity not otherwise expressly provided for, must be instituted within one year from the date of the act or order. To determine whether the present suit is barred under article 14, it has to be considered whether it can be treated as a suit to set aside an order of an officer of Government in his official capacity. In my

opinion it is not a suit of the nature contemplated by article 14. It is not necessary for the plaintiffs to set aside the order of the Collector nor do they seek to do so. The suit is of the nature contemplated by Section 89 of the Land Registration Act, which provides that nothing contained in that Act and nothing done in accordance with that Act shall be deemed to preclude any person from bringing a regular suit for possession of or for declaration of right to any immovable property to which he may. deem himself entitled. The plaintiffs seek for declaration of their title to the shares in dispute. No doubt their ultimate object is, if they succeed" in this litigation, to apply before the Collector for registration of their names on the basis of their title; but that does not make this suit one to set aside an act of an officer of Government. This view is in accordance with that taken by this Court in the cases of Omrurnisia Bibeo v. Dilawar Ally Khan 10 C. 350 and Luchmon Sahai Chowdhry v. Kancliun Ojhain 10 C. 525. In the second of the two cases to which I have just referred, it was ruled that the Civil Court has no power to set aside an order passed under the Land Registration Act and when a prayer for such relief is contained in a plaint which also seeks for a declaration of right and title to and confirmation of possession in a property, such prayer may be treated as mere surplusage. The suit is in substance one for the declaration of the plaintiffs' title in respect of the property in dispute and to such a suit article 14 has no possible application. Reference was made by the learned Vakil for the appellant to the case of Parbutty Nath Butt v. Raj Mohun Butt 20 C. 367 to show that article 14 may apply to a case of this description. In my opinion the case relied upon is clearly distinguishable and does not lend any support to the contention of the appellant. In that case it was held that a suit u/s 150 of the Bengal Estates Partition Act of 1876 is governed by the one year's rule of limitation provided in article 14 of the second Schedule of the Limitation Act. A reference, however, to Section 150 of the Estates Partition Act shows that the suit contemplated by that section is a suit to modify or set aside an order of a Revenue Officer. A suit u/s 89 of the Land Registration Act on the other hand is a suit of an entirely different description. It is, as I have already stated, a suit for declaration of the title claimed by the plaintiffs. I express no opinion upon the question whether the case of Parbatti Nath Butt v. Rajmohun Butt 20 C. 367 is or is not open to criticism, even with reference to the provisions of the Estates Partition Act. It is sufficient for the purposes of the present case to hold that the decision has no bearing upon the question of limitation raised before me. The first point taken on behalf of the appellant consequently fails.

3. In support of the second contention, it is argued that the judgment of the learned Subordinate Judge is vitiated by the circumstance that he has relied upon Exhibit 13 (which is an extract from an entry made under the Land Registration Act) in proof of the title of the plaintiffs. To support this position, it is contended, on the authority of the decision of this Court in Ram Bhusan Mahto v. Jebli Mahto 8 C. 853 that registration" of name under Bengal Act VII of 1876 is not only not conclusive proof but is no evidence at all, upon the question of title

of a proprietor so registered, and such registration does not relieve a plaintiff from the onus of proving his title to the land claimed by him. In my opinion, there is no room for any application of this principle to the facts of the present case. In the first place, as I shall presently explain, the learned Subordinate Judge has not in reality relied upon Exhibit 13 as proof of the title of the plaintiffs, and in the second place, the principle laid down in the case upon which reliance is placed has no application to the facts of the present litigation. It appears that the plaintiffs as well as the defendants claimed title from a gentleman named I. P. Wise. He was admittedly the original owner of a 12 1/2 annas in the zamindary within which the villages now in dispute are situated. It does not, however, follow from this circumstance that Wise was entitled to a 12 1/2 annas share in every village comprised in the zamindary. The plaintiffs asserted that by arrangement with his co-sharers, Wise was in possession of the entirety of four of these villages and of a share of the fifth village. The substantial question in controversy between the parties, therefore, was whether their common predecessor was in proprietary possession of a share only of the five villages corresponding to his share in the zamindary, or, whether he was in proprietary possession of the entirety of some villages and of a share in another village. The plaintiffs contended that Wise was in exclusive possession of the whole of the first four villages and of a share of the fifth village. In proof of this circumstance Exhibit 13 was received in evidence; and it showed possession as alleged by the plaintiffs. The learned Subordinate Judge has not treated their Exhibit as evidence upon the question of title, but he has received it as evidence of the manner in which possession was held. For this purpose it is, undoubtedly, good evidence, as appeal's from the decision of this Court in the case of *Saraswati Dassi v. Dhanpat Singh* 9 C. 431 : 12 C.L.R. 12 in which Sir Richard Garth explained the effect of his earlier decision in *Ram Bushan Mahto v. Jebli Mahto* 8 C. 853. It may further be pointed out that the circumstances of the litigation in the last mentioned case were entirely different from those of the present case. In that case, the plaintiffs sought to have their title established to certain rent, and as appears from the Report, the only evidence which they adduced, was that their names were recorded as share-holders in the estate under the Land Registration Act. The learned Judges held that this circumstance alone was no evidence at all upon the question of the title of the plaintiffs to the share which they claimed and that the registration of their names did not relieve them from the burden of proving their alleged title of those shares. It is clear, however, from the two cases to which I have referred that the fact of registration is evidence upon the question of possession and" the learned Subordinate Judge was quite correct in relying upon Exhibit 13 for the purpose of deciding the question whether the common predecessor of the plaintiffs and the defendants was in possession of a share only of all the villages corresponding to his share in the zamindary, or, whether by mutual arrangement with his co-sharers in the zamindary, he was in possession exclusively of some of the villages and his co-sharers were in exclusive possession of other villages. I may further point out that the decision of the Subordinate Judge is not based upon this document

alone. There is considerable force in the contention of the learned Vakil for the respondents that the decision of the Subordinate Judge was arrived at independently of this evidence, because he expressly says that there is sufficient evidence to show that Mohini who derived title from Wise, and from whom the respondents as well as the appellant and the other defendants acquired title to the property in controversy, died possessed of certain specified shares in the different villages. He could not have been in possession of these shares unless Wise himself or his predecessor had been in possession of the entirety of the four villages. Under these circumstances I must hold that the second point taken on behalf of the appellant cannot be sustained.

4. The learned Vakil for the appellant faintly suggested that the suit was defective for want of parties. The question was raised in the first issue before the Munsif and was decided in favour of the plaintiffs. The defendant does not appear to have challenged the decision of the Munsif upon this point before the Subordinate Judge, who, states expressly in his judgment that only two points were argued before him. It appears to me that the appellant is not entitled to re-open this point at the present stage of the proceedings. I am further satisfied upon an examination of the judgment of the Munsif that this point was correctly decided by him, and his view cannot be successfully assailed. It was also suggested by the learned Vakil for the appellant that the decision of the Subordinate Judge upon the question of shares is open to criticism. I am unable to find however, that his decision on this part of the case involves any error of law. In my opinion his conclusion upon the question of shares cannot be successfully challenged in second appeal.

5. It may finally be pointed out that the defendant has made parties respondents to this appeal, the plaintiffs alone (sic) appears from the judgment of the Subordinate Judge that the plaintiffs got a decree under which the shares of defendants Nos. 2 to 7 were to be proportionately reduced in order that the plaintiffs might have the share to which they are legitimately entitled. It is obvious that the decree made by the Subordinate Judge cannot be modified (even if there were any substantial grounds upon which that decree can be assailed), in the absence of defendants Nos. 3 to 7. It is not necessary, however, to deal with this point further because in my opinion there is no substance in the appeal, and it must fail on the merits. The appeal is consequently dismissed with costs.