

(1936) 11 PAT CK 0010
In the Patna High Court

Sitan Narain Deo and Another

APPELLANT

Vs

Dasrath Deo and Others

RESPONDENT

Date of Decision : 09-11-1936

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 208, 214
Limitation Act, 1963 — Article 95

Citation : AIR 1937 Patna 331

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This case has been argued very elaborately, a large number of authorities have been quoted, and the facts themselves have been gone into in great detail. So far as the facts are concerned, they can be stated very shortly for the purposes of the point which arises. The plaintiff was a mortgagee of the tenure, having got an order for possession after having purchased the property in execution of the decree. During the mortgage litigation (the dates in the circumstances are not very material), the tenure was put up for sale by the landlord and it has been held by the Courts below that the fact that the tenure fell into arrears for rent was due to the fraud and default of the defendants. The defendants, it has been held, had purchased the tenure in the names of the appealing defendants. The transaction was therefore a farzi one and the purchase was therefore by the tenure-holders themselves. In the circumstances the learned Judge in the Court below has held that the plaintiff is entitled to the relief which he claimed in the suit and it is upon the nature of the relief claimed that the point in this appeal depends.

2. It is contended that the action is barred by limitation by reason of Article 95, Lim. Act, which provides a period of three years for action based on a fraud. Mr. Mukharji on behalf of the respondents contends that in the circumstances of the case and in any event the action was not barred because the knowledge of the fraud was within three years of the case. But the case in both the Courts below proceeded on the footing that if Article 95 applied, the action would be barred by

limitation. The matter would therefore appear to depend upon the nature of the plaintiff's claim. It is true that there are in the plaint allegations which would amount to allegations of fraud; in the relief portion the expression "fraud" is used in connexion with the certificate sale. The plaintiff alleges that the proceedings arising out of the certificate sale were absolutely fraudulent and that defendants 3 and 4 had thereby acquired no right, nor did they or could they affect the plaintiff's title. It is no good pretending that the plaint is a model of pleading and I have no doubt that a good deal of it would have been struck out by any Court as embarrassing. But the question is, what was the substance of the plaintiff's claim, what facts did he prove, and did those facts entitle him to succeed in the action? There is no dispute in this case that Section 208, Chota Nagpur Tenancy Act, applies. This section refers to the Bengal Rent Recovery (under-tenures) Act of 1865, the main provision of Section 16 whereof is that "the purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances". There is then a proviso, and lastly, a clause to the effect:

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

3. Having regard to the findings of fact of the Courts below, there is not the slightest doubt that the clause last referred to applies. It is difficult to understand quite what the argument of Mr. De is. It is based on the contention (naturally so) that the plaintiff in this action is in some way seeking to set aside a sale or to modify the effect of a sale within the meaning of Section 214, Chota Nagpur Tenancy Act. The contention is that the plaintiff in this action is bound in some way, either directly or indirectly, to set aside the sale before he could have the relief which he sought. I have not the slightest doubt that if that were so, then the action would not be maintainable and would be barred u/s 214, Chota Nagpur Tenancy Act. But the argument seems to forget the proviso (which I have quoted) to Section 16, Bengal Rent Recovery Act of 1865. Neither one of the provisions of Section 16 is of greater value than the other. On a plain construction each subsection must be given its-full value; and, taking the matter in that way, it is shown that there are two classes of cases: one in which a property is sold free from all encumbrances, and the other in which the encumbrances remain. The facts of this case disclose that it is the latter. Now, Mr. De's argument, which as I have already stated, is somewhat difficult to understand, is to fete effect that the plaintiff had to establish those facts in order to bring himself within what I call the proviso to Section 16, Act 8 of 1865.

4. Whether so to do he had to bring an action or whether in the circumstances the defendants would have to bring an action, depended upon who happened to be in possession. But I fail to see entirely how it can be said that this is to modify or to set aside an order u/s 214. Mr. Mukharji's client merely desired a declaration to the effect that the mortgage subsisted and that the plaintiff was entitled to the relief, which the fact that he was the mortgagee entitled him to, the relief in the present case being for possession. As I have already stated, it is

true that allegations of fraud were made but in the circumstances they were entirely unnecessary; and when one reads the substance of the relief, it was merely a declaration that the sale did not affect the encumbrances and, as I have just a moment ago" said, the plaintiff was entitled to such relief which the fact that he was the mortgagee would entitle him to. The principle disclosed in the sub-clause u/s 16, Rent Recovery Act, has been the basis of many judgments of the High Courts in India and also of the Judicial Committee of the Privy Council, though neither that section nor Section 90, Trusts Act, applied. Shortly stated, the principle is that a person cannot benefit by his own wrong; in other cases it might be said that the principle of a person not being entitled to derogate from his own grant would apply, apart from the sections to which I have referred. In my judgment it was not an action based on fraud although there were allegations of fraud. It was an action claiming that the sale did not affect the encumbrances and the plaintiff is entitled to possession. The period of limitation is the period provided by Article 138, Limitation Act. This judgment governs both appeals Nos. 457 and 458 of 1934 and the appeals are dismissed with costs. Leave to appeal is refused.