

(1955) 08 CAL CK 0031
In the Calcutta High Court
Case No : A.F.O.D. No. 7 of 1949

Sm. Durgadasi Dasi and Others

APPELLANT

Vs

Krishna Behari Biswas and Others

RESPONDENT

Date of Decision : 04-08-1955

Acts Referred:

Bengal Tenancy Act, 1885 — Article 2
Limitation Act, 1908 — Article 116

Citation : AIR 1956 Cal 227 : 60 CWN 676 : (1957) 2 ILR (Cal) 638

Hon'ble Judges : Sarkar, J; R.P. Mookerjee, J

Bench : Division Bench

Advocate : Apurbadhan Mukherjee, Chandra Narayan Laik, Amiya Kumar Mookerjee and Nirmal Kumar Ganguli, for the Appellant; Shyama Charan Mitter, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Mookerjee, J.—The only question in issue in this appeal is whether the suit should be governed by Article 2 of Schedule III, Bengal Tenancy Act or by the six years rule of Limitation under Article 116, Limitation Act.

2. The learned Subordinate Judge has held in favour of the plaintiff that the suit is governed by the general rule of limitation and not by the special limitation as under the Bengal Tenancy Act. The defendants have appealed to this Court.

3. Only such facts as are relevant for the decision on the question of limitation need be referred to.

4. The plaintiffs were patnidars in respect of four different patni jamas under the proprietors of a number of touzis. The predecessor in interest of the defendants had taken darpatni settlement under the said four patni jamas of the plaintiffs. The proprietors of the touzis under which the patnis were held put up the latter to sale in execution of rent decrees obtained by the former in respect of the different touzis. The patni interests on the plaintiffs in all the four patnis were

sold in auction on different dates.

5. The plaintiffs claim that they had demanded unrealised arrears of darpatni rent due from the defendants as darpatnidars upto the respective dates when the plaintiffs lost their patni interest.

6. The present suit was filed on 16-4-1947. Claims for darpatni rent were alleged to have accrued due from 1349 B. S. i. e. 1942-43. If the present suit is governed by Article 2 of Schedule III, Bengal Tenancy Act claim for rent which had accrued due in 1349 B. S. had become barred on the date of the suit.

7. On behalf of the defendants appellants it is contended that on a perusal of the darpatni kabuliat (Ex. 1) it was evident that it was for agricultural purposes and accordingly the special rule of limitation would be attracted.

8. On behalf of the plaintiffs respondents it is urged that it would not be necessary to consider this general question as the plaintiffs having lost their interest as patnidars before the filing of the suit there was no relationship of landlord and tenant on the relevant date and the special limitation as provided in Article 2 of Schedule III, Bengal Tenancy Act cannot in any view be attracted.

9. Article 2 of Schedule III, Bengal Tenancy Act provides 3 years as the period of limitation from the last date of agricultural year in which the arrears fell due provided that the suit for arrear of rent is brought by a landlord.

10. The short question is whether for attracting the provisions of Article 2 of Schedule III the relationship of landlord and tenant has to subsist when the rent became due or that such relationship must continue till the time when the suit is filed.

11. In -- "Dewan Balmukund Sahai v. Tarini Singh" 16 Cal LJ 360 (A) it had been held that whether Article 2 (b) of Schedule III, Bengal Tenancy Act applied or not is to be determined with reference to the relationship between the parties when the right to sue accrued i. e. when the arrears of rent claimed fell due.

In support of this principle reference was made to the rule which was then considered to be a good one that a decree for rent obtained by the landlord after he had parted with his interest is a rent decree and to be enforceable as such. Reliance was placed on -- Maharaj Bahadur Singh v. A.H. Forbes" 35 Cal 737 (B), --"Srimant Roy v. Mahadeo Mahata" 8 CWN 531 (C) and -- "Khetrapal Singh v. Kritarthamoyi" 33 Cal 566 (FB) (D). The question is whether the decision in Balmukund's case (A) may be considered to be an authority after the decision of the Judicial Committee in -- " AIR 1914 111 (Privy Council) (E).

The decision of this Court in -- Maharaj Bahadur Singh v. A. H. Porbes (B)", ante was overruled. The point for decision before the Judicial Committee was about the enforceability of a charge which is created u/s 65, Bengal Tenancy Act. The Judicial Committee pointed out that the right to bring a tenure or holding to sale u/s 65 of the said Act existed so long as the relationship of landlord and tenant

continued. If such relationship did not continue till the sale in execution of the decree for the arrears the charge could not be enforced.

12. Reference may also be made to the Special Bench decision in -- Krishna Pada Chatterjee Vs. Sm. Manada Sundari Ghose and Others, (F) wherein it was pointed that on the authority of -- AIR 1914 111 (Privy Council) (E)", the earlier Full bench decision in "33 Oal 566 (FB) (D)" had to be overruled.

13. It is unquestionable that the principles on which the decision of this Court in -- "16 Cal LJ 360 (A)", was passed have been considerably shaken by "Forbes case (E)".

14. Article 2 of Schedule III is attracted when the suit is brought by the "landlord". A rule of limitation is to be enforced as on the circumstances at the time of filing of the plaint. Only if the plaintiff is on that date a "landlord" i.e. relationship of landlord and tenant is subsisting between the parties -- that the special period of limitation laid down in that Article will be attracted.

15. To avoid difficulties and anomalies in allowing a charge u/s 65, Bengal Tenancy Act even after the relationship between the parties had ceased the Judicial Committee in "Forbes case (E)" laid down that such relationship must continue until the sale takes place. For enforcing a rule of limitation those difficulties do not arise.

On the plain reading of the provisions of Article 2 of Schedule III along with the definition of the term "landlord" as appearing in Section 3(6), Bengal Tenancy Act there is no room for doubt that the relationship is to subsist at the time when such limitation as in the Article is made applicable. In the definition of the term landlord the use of the present tense signifies that only so long as the tenant holds under a person with the latter (sic) is a landlord.

16. It must therefore be held that the defendant is not entitled to plead in the present case that the special Law of Limitation as laid down in Article 2 (b) of Schedule III, Bengal Tenancy Act is applicable.

17. It is to be noticed in the present case that ordinarily it is the plaintiff who relies on the special Law of Limitation for including within, the claim the arrears due in place of the rule as under the ordinary Law of Limitation. When disputes arise as to the applicability of the particular rule of limitation the tenant prefers to be governed by the ordinary rule of limitation. In the present case, however, it is the tenant who is contending that not the ordinary rule of limitation but the special rule would be attracted.

The plaintiff is relying on the ordinary law. The reason is that there is a registered instrument and the period of limitation under the ordinary rule under Article 116. Limitation Act six years is allowed whereas under the special limitation as in Schedule III, Bengal Tenancy Act a shorter is available.

18. In view of the reasons already given the plaintiff is entitled to a decree for

the longer period under the ordinary Rule of Limitation. This appeal is accordingly dismissed with costs.

Sarkar, J.

19. I agree.