
(1907) 07 CAL CK 0016
In the Calcutta High Court

Upendra Kumar Chakravarti

APPELLANT

Vs

Sham Lal Mandal

RESPONDENT

Date of Decision : 26-07-1907

Acts Referred:

Limitation Act, 1963 — Article 175C

Citation : (1907) ILR (Cal) 1020

Hon'ble Judges : R.F. Rampini, Acting C.J.; Sharfuddin, J

Bench : Division Bench

Judgement

Rampini, Acting, C.J., and Sharfuddin, J.—This is an appeal against a decision of the Subordinate Judge of Alipore, dated the 16th November 1905.

2. The suit is one for recovery of arrears of rent in respect of 102 bighas 10 cottahs of land said to be held by the defendants under the plaintiff.

3. A preliminary objection on behalf of the plaintiffs-respondents has been taken to the hearing of the appeal, to the effect that the principal respondent, Sham Lal Mandal, died more than six months ago and that no steps have been taken to substitute the names of his heirs in his place. The learned pleader for the appellants admits that the respondent, Sham Lal Mandal, died on the 22nd October 1906, and he presents to day an, application for the substitution of the names of the heirs of the deceased respondent for the name of the deceased, respondent, although, more than six months have elapsed since the 22nd October last.

4. There is an allegation in the affidavit of the karpardas of the respondent, Gopal Lal Mandal, that the appellants were well aware of the death of the respondent, Sham Lal Mandal, in November 1906, owing to proceedings for substitution of the name of the deceased respondent having been taken in another suit in which the present appellants were concerned. The appellants in the affidavit filed by them do not attempt to traverse this allegation of the karpardas of the respondent. But the learned pleader who appears on their

behalf relies upon a ruling of the Madras High Court in the case of *Susya Pillai v. Aiyakannu Pillai* (1906) ILR 29 Mad. 529 in which it has been laid down that, in the case of first appeal, the period of limitation for bringing in the heirs of a deceased respondent is three years, as provided by Article 178 of the Second Schedule of the Limitation Act, and not six months as provided by Article 175, Clause C of the said Schedule to that Act. In this judgment in the case of *Susya Pillai v. Aiyakannu Pillai* (1906) ILR 29 Mad. 529 the learned judges of the Madras High Court have set aside the previous ruling of that Court in the case of *Vakkalagadda Naraiah v. Vahizulla Sahib* (1906) ILR 28 Mad. 498, which was to the contrary effect. They have done so relying on the case of *Lakshmi v. Sri Devi* (1885) ILR 9 Mad. 1.

5. We are unable, however, to assent to this decision of the Madras High Court. The decision proceeds upon the ground that, in Article 175, Clause C, of the second Schedule to the Limitation Act, provision is made only for the bringing in of the heirs of a deceased party to a suit or first appeal, under the term of Section 582 of the Code of Civil Procedure. They point out that in this Article there is no reference to Section 587 of the Code of Civil Procedure, which makes the provisions of Chapter XLI CPC relevant to first appeals, applicable to second appeals; and for these reasons they think that the period of limitation must be that prescribed by Article 178 of the Second Schedule to the Limitation Act and not the period prescribed by Article 175, Clause C.

6. It appears to us, however, that Section 587 of the CPC must be read in conjunction with Section 582 of that Code and Article 175, Clause C, of the Second Schedule of the Limitation Act, and that, therefore, the period of limitation laid down in Article 175, Clause C, applies as well to second appeals as to suits and first appeals.

7. In our opinion it can not possibly have been the intention of the Legislature to provide that the period of limitation for bringing in the heirs of deceased opposite parties should be six months in the case of suits and first appeals, while the period of limitation for the same purpose should, in second appeals, be three years. The Legislature could never have intended to make such a distinction between suits and first appeals on the one hand and second appeals on the other: or, if they intended to do so, they would, we think, have expressed their intention in clearer language. Furthermore in our opinion it is a most unreasonable interpretation of the law to lay down that second appeals should be allowed to remain pending for three years to enable the appellants to take steps to bring in the heirs of a deceased respondent. We are fortified in our conclusion on this point by the recent decision of the Allahabad High Court in the case of *Madhuban Das v. Narain Das* (1907) 4 All. L.J.R. 397, in which the ruling of the Madras High Court in the case of *Susya Pillai v. Aiyakannu Pillai* (1906) ILR 29 Mad. 629 has been dissented from.

8. On these grounds, therefore, we must hold that this second appeal has abated so far as the respondent *Sham Lal Mandal* is concerned.

9. The pleader for the defendants appellants now contends that, even if this be so, he is entitled to go on with the appeal as against the other respondents, as laid down in the case of Chandarsang Versabhai v. Khimnbhai Raghobhai (1897) ILR 22 Bom. 718. We consider that this plea is correct; and we must, therefore, allow the appeal to proceed as against the remaining respondents.

10. Turning now to the merits of the case we observe that the suit is for recovery of arrears of rent, and that the lower Courts have held that the defence is barred by the rule of *res judicata*.

11. The plaintiffs sue for arrears of rent in respect of 102 bighas 10 cottas of land. But in a previous suit, the defendants, although they admitted to at they had given a *kabuliat* for 115 bighas of land at Rs. 64-11 annas per annum, yet pleaded that 83 bighas had ceased to appertain to the said holding and that the plaintiffs were not entitled to the amount of rent claimed. It was held, however, that they had not made out a case for reduction of rent and were bound to pay the rent sued for. The defendants raised this very same defence in this suit and the Courts below have held that they cannot raise such a plea now. The learned Subordinate Judge has said that the defendants cannot take this defence in the present suit, because in the rent suit No. 598 of 1896, the matter was finally settled, and it was decided by the help of a map prepared in a previous suit, which was relied upon by both parties, that the quantity of land, 102 1/2 bighas, was in the defendants' possession as appertaining to the disputed holding.

12. The pleader for the defendants-appellants urges that this finding of the Subordinate Judge is wrong; and he calls our attention to the judgment of Babu Balaram Mullick in rent appeal No. 263 of 1897, dated the 27th August 1897. This judgment does not go into the case in much detail and it may be that it does not support, in all particulars, the finding of the Subordinate Judge in this case. But it certainly is an authority for coming to the conclusion that the defendants' plea in that case for reduction of rent was disallowed, But the pleader far the defendants-appellants has not produced before us the finding of the Munsif in suit No. 598 of 1906, but only the Appellate Court's judgment in that suit; and we have no reason to suppose that the points were not entered into and fully discussed and decided in the suit before the Munsif. The Munsif in the present suit has observed as follows:--The issue was "what is the area of land comprised in the disputed holding as it now stands?" The finding was, "I find that the defendants have failed to make out by any reliable evidence that any portion of the land for which rent is claimed in this suit is outside the limits of Taluk No. 297 and is held by them under other landlords. I find, therefore, that the area of the defendants' holding is 102 1/2 bighas."

13. The appeal, therefore, fails upon the merits and is dismissed with costs.