
(1874) 02 PRI CK 0003

Privy Council

Case No: None

Mohummud Buhadoor
Khan and Mohummud
Ally Buhadoor Khan

APPELLANT

Vs

The Collector of Bareilly
(On The Part of
Government) and
others

RESPONDENT

Date of Decision: Feb. 27, 1874

Citation: (1874) 1 IndApp 167

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier,
Lawrence Peel, JJ.

Judgement

Montague E. Smith, J.

1. The only question in this appeal, which comes before their Lordships in the shape of a special case, is whether the suit brought by the Appellants against the Collector of Bareilly and the purchasers from the Government, to recover certain landed property in Bareilly, is barred by limitation. The Appellants claim the J property as the heirs of their father, Mohummud Tuffuzool Hossein Khan, who died on the 22nd of April, in the year 1854. The OF special case states that it is to be assumed for the purposes of the " case that the father of the Appellants was on his death entitled to the property sued for. That statement is made only for the purpose of raising the question which is for their Lordships" consideration on the Statutes of Limitation. It appears, however, upon the special case, that before and at the time of the death of Mohummud Tuffuzool Hossein Khan, one Khan Buhadoor Khan was in the actual possession of the property. That person became a rebel, and in May, JI 858, his property was seized by the Government as forfeited on the ground of his rebellion. At the time of their father"s death, and of the forfeiture of the property, the Appellants were minors. The elder Appellant became of age in 1861, and the younger in February, 1864. The present suit was brought on the 1st of

May, 1865, and at that time the elder Appellant had been, as appears from these dates, of age for four years, and the younger Appellant for upwards of a year.

2. The Act of Limitation which is relied on by the Government is Act IX. of 1859. That Act was passed for the special purpose of providing a Court for the adjudication of claims by innocent persons upon the property of rebels which had been forfeited to the Government. It established a special Court, consisting of three Commissioners, and suspended the action of all other Courts in respect of such claims. Special modes of proceeding are established, and various clauses in the Act relate to that special course of procedure. But there are provisions in the Act which relate not merely to the Court so established and the procedure under it, but are of a general character, and apply to the property forfeited in whatever Court the claims may be made regarding it. One of those clauses is Clause 16, which provides, " Whenever any person shall have been convicted of an offence for which his property was forfeited to Government, no Court has power in any suit or proceeding relating to such property to question the validity of the .conviction." Sections 17 and 18 are also clauses of a general nature, and so it appears to their Lordships is Clause 20, which contains the limitation on which the Government rely. The clause is this: " Nothing in this Act shall be held to affect the rights of parties JJ, not charged with any offence for which upon conviction the property of the offender is forfeited in respect to any property attached or seized as forfeited or liable to be forfeited to the Government; COL provided that no suit brought by any party in respect to such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates."

3. It was suggested that this limitation was meant to apply only to claims prosecuted before the Court of Commissioners established by the Act, and it was contended that the Act was of a temporary nature, and that its provisions fell with the purpose for which it was passed. But the Act is not made temporary by any enactment. It was in part repealed by the general repealing statute of 1868, that is Act VIII. of 1868, and the mode of repeal is significant. It is not altogether repealed, for the general clauses to which I have referred, including Clause 20, are saved from the operation of the repealing Act. The repeal and saving are both found in the schedule to Act VIII. It is clear from their being thus saved that these clauses were at that time considered by the Legislature to be of a general nature, affecting claims to property which had been forfeited before whatever Court those claims might be prosecuted.

4. The words are perfectly plain,--no suit brought by any party in respect of forfeited property shall be entertained unless it be instituted within the period of a year from the date of seizure. It is true that this limitation is introduced by way of proviso. But their Lordships think that, looking at the various parts of the Act and gathering the purpose and intention of the Legislature from the whole, this was a substantive enactment; and that, although it appears under the form of a proviso, it was a limitation intended by the Legislature to apply to all suits brought by any persons in respect of forfeited property.

5. Assuming then that the case is within the Act, their Lordships will consider the other objections which have been raised. The answer first put forward was that this limitation could be held only to apply to some right, title, and interest--using the words of the ordinary execution Acts--of the rebel himself. Now it is obvious that this cannot be the right construction of the Act. It would be a wholly insensible enactment if it were, because the Act assumes that the interest of the rebel is forfeited, and it is only in respect of claims other than his that this limitation could operate. The Act is declared not to affect the rights of parties in respect of the property seized. "The property" is the thing seized as forfeited, whether it be land or a jewel, and the right referred to is the right of an innocent party, other than the right of the rebel, in that property.

6. Another contention, which seems to have been the only one urged in the High Court, as far as it appears from the judgment, is, that a saving with respect to parties under disabilities must be taken to be by equitable construction implied in this clause. Their Lordships however think it is impossible that any Court can add to the statute that which the Legislature has not done. The limitation is enacted in plain and absolute terms. The Legislature has not thought fit to extend the period which it has prescribed to persons under disability. "Where such enlargements have been intended, they are found in the Acts containing the limitation, as in the general Act. This Act contains no such saving, and their Lordships would be legislating and not interpreting the statute if they were to introduce it.

7. It was said that the clauses in the general statute, Act XIV., 1859, relating to disabilities might be imported into this Act, but this cannot properly be done. Act XIV. is a code of limitation of general application. This Act is of a special kind and does not admit of those enactments being annexed to it. It is to be observed that if it could be done it would not assist the Appellants, because the limitation of Act IX. is one year only, and the saving in favour of minors in Section 11 of Act XIV. would not bring them within time, as a year elapsed after they came of age before the bringing of the present suit.

8. One other objection requires to be noticed, that this Act was not retrospective. Undoubtedly Mr. Doyme was able to suggest cases in which hardship might arise to persons who would not have a full year to claim before they would be barred under the provisions of this Act, or even where the year might have elapsed between the date of the confiscation and the passing of the Act. Although hard cases may arise, their Lordships consider that the Act is plainly retrospective in its operation, and includes claims to forfeited property which had been confiscated previously to its passing.

9. Their Lordships are of opinion that the judgment of the High Court is right, and they must humbly advise Her Majesty to affirm it.

10. Mr. Forsyth:--One of the questions is: "Whether, if it shall be decided that the Appellants or either of them is barred by limitation, the Government Respondent shall have any and what costs of this special case."

11. After a discussion on this question,--

Sir Montague E. Smith said, According to the course of their Lordships" decisions the Government are entitled to the costs. Whether they will think that under the circumstances they should enforce payment of them from the Respondent is for their consideration.