(1977) 06 CAL CK 0003

Calcutta High Court

Case No: Letters Patent Appeal No. 2 of 1964 in S.A. No. 54 of 1956

Niharbala Roy		APPELLANT
	Vs	
Dhatri Charan Chakravorty		RESPONDENT

Date of Decision: June 9, 1977

Acts Referred:

- Limitation Act, 1908 - Article 134A, 134B, 134C, 144

Citation: (1978) 2 ILR (Cal) 556

Hon'ble Judges: G.N. Ray, J; Banerjee, J

Bench: Division Bench

Advocate: M.N. Ghosh and S.N. Raychowdhury, for the Appellant; Chandranath Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Banerjee, J.
This Letter Patent appeal at the instance of the Appellant-Defendant arises out of a suit for possession of the disputed property filed by the Plaintiff-Respondent after eviction of the principal Defendants Nos. 1, 2 and 3. The case of the Plaintiff is as follows:

2. The disputed properties constitute absolute debotter of the Plaintiff deity and appertain to Taided No. 2830 of 1209 B.S. of Midnapore Collectorate. The Plaintiff''s case is that at the time of the Taided, Bejoyram and Ramsunder Chakravarty were the shebaits of the Plaintiff deity. Bejoyram''s great-grandson was Ramgopal whose only son is the Plaintiff. Balaram''s great-grandson was Jyotish whose only heir was his sister''s son Kalobaran, the deceased husband of the Defendant No. 4. The shebaiti interest of Ramsundcr devolved on his grandsons Abinash and Dinanath. Abinash was succeeded by his widow Bidhumukhi and Dinanath by his two sisters sons Upendra Roy and Sripati Chakravarty. It is alleged that Bidhumukhi, Upendra and Sripati transferred their 1/3|rd shebaiti right along with the debottar properties

in their possession to the Plaintiff''s father Ramgopal by three registered documents. Hence, the Plaintiff''s father used to perform the pala of shebapuja of the deity for 8 months in respect of his 23rd shebaiti right and held debottar properties measuring 2.18 acre recorded in khatian No. 302 of mouza Pirchak, Jyotish performed the pala for 4 months out of the usufruct of the debottar properties measuring 1.29 acre including the disputed properties in his possession and recorded in khatian of 304 of the mouza. The properties of these two khatians are the same as the 7 bigha lands of mouza Brahmapur as acted in the Taided and it is alleged that they are absolute debottar properties of Plaintiff-deity. Jyotish died in 1327 B.S. and his heir Kalobaran sold the disputed property as his personal properties to one Surendra Roy by a kobala dated February 4, 1921. The case of the Plaintiff is that this transfer is fraudulent, illegal and void. The father of the Plaintiff being the other shebait brought a T.S. No. 2 of 1930 in this Court against Jamini, Bholanath and Madanmohan as the Defendants and Kalobaran as the pro Defendant in order to avoid the alienation and remove Kalobaran from shebaitship. But the Plaintiff''s father was gained over with money and was made to compromise the suit admitting that the disputed properties were personal properties of Jyotish. Kalobaran died in Jaistha 1361 B.S. and after the death of Kalobaran, the Plaintiff brought the present suit for recovery of the properties.

3. For the purpose of consideration of this case, the point raised is not necessary for us to advert other facts. The question is one for limitation and therefore, the only point for consideration in this case is whether the transfer of the debottar properties was made on February 4, 1921 and Kalobaran died in 1361 B.S. and the suit was brought on December 8, 1954. In the Court below it has been held that the disputed properties are absolute debottar properties. It was further held that Kalobaran sold the properties on February 4, 1921 as if it was his personal properties and it was further found that Kalobaran died in 1361 B.S. (November 1954). The trial Court dismissed the suit. The appeal filed by the deity having been allowed the Defendant preferred the second appeal in this Court. The second appeal having been dismissed the Defendant on a leave granted by the Hon''ble Single Judge preferred this appeal under Clause 15 of the Letters Patent.

4. The only point argued by Mr. Ghose on behalf of the Appellant before us is regarding the starting point of the limitation and whether Article 144 of the Limitation Act or Articles 134 A, B and C will apply. It must be stated that by amendment in 1929 of the Limitation Act, Articles 134A, 134B and 134C were added. Article 134A, B and C of the Limitation Act run as follows:

Description of suit.	Period of Limitation.	Time from which period begins to run.
When the transfer is voidable by the Plaintiff.	Twelve years.	The date of the registration of the transfer.
The death, insanity or removal of the transferor.	Twelve years.	The date of the death, insanity or removal of the transferor.
The insolvency or removal of the seller.	Twelve years.	The date of the insolvency or removal of the seller.

5. The learned Single Judge held that the suit is not barred by limitation as the suit is governed by Article 134B of the Limitation Act and the starting point of the limitation would run from the date of death of Kalobaran, that is, 1954 and not from the date of the transfer, that is February 4, 1921.

6. Mr. Ghose on behalf of the Appellant strongly relied upon the case Sm. Hemanta Kumari v. Iswar Sridhar Jiew 50 C.W.N. 628 in support of his contention. Mr. Mukherjee however relied upon the case Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another, . The case Sm. Hemanta Kumari v. Iswar Sridhar Jiew arose out of a suit for recovery of the possession of the land on establishment of title of the Plaintiff Sree Sree Iswar Sridhar Jiew, deity. The suit property, it is alleged, was an absolute dcbottar properly belonging to the Idol Sri Sri Iswar Sridhar Jiew and the land as mortgaged in 1905 by the then shebaits of the deity to secure an advance received from the latter. Baburam brought a suit to enforce the mortgage and in execution of the decree obtained by him, the mortgaged properties were put up to sale and purchased by him in 1908. Since then Baburam and after his death, his successors were in possession of these properties, in the year 1932 the last of the shebails who mortgaged the property to Baburam died and in 1934 the present Plaintiffs instituted a suit to recover possession of the debottar property. In considering the question of limitation of such suit the Division Bench of this Court speaking through Bijon Kumar Mukherjea J. : (as his Lordship then was) held as follows:

It seems clear to us that the former shebaits when they mortgaged the properly did so not in their capacity as shebaits but as secular owners of the property which they purported to hold in niskar right. The mortgage decree has not been made an exhibit in this case, but the sale certificate makes it clear that the decree in execution of which this property was sold was not against the previous shebaits qua shebaits but against them in their own personal capacity and only the right, title and interest of the Defendants personally vested in the purchaser. This being the position, we are bound to hold that the purchase was void altogether and the possession of the purchaser was adverse from the date of the sale. As more than 12 years have elapsed since that date, the suit must be deemed to be barred by limitation. While Mr. Ghose strongly relied upon the said paragraph Mr. Mukherjee contended that the statement of law as made in the case Sm. Hemanta Kumari v. Iswar Sridhar Jiew 50 C.W.N. 628 is no longer correct in view of the case Srinivasa v. Ramaswamy (Supra). In our opinion, Mr. Mukherjee''s contention must be accepted to be correct in view of the above Supreme Court''s decision. In the said case the Supreme Court has to deal with the said argument advanced by the Learned Counsel for the Appellant. In para. 11 of the said judgment the Supreme Court stated as follows:

11. The argument is that in cases falling under Article 134B the transfer made by the manager of a Hindu endowment is challenged by his successor on the ground that it

was beyond the authority of the manager; and such a challenge necessarily postulates that the transfer was effected by the manager as manager purporting to deal with the property as belonging to the religious endowment. Where, however, the transfer is made by the manager not as manager, but as an individual and he deals with the property not on the basis that it belongs to the religious endowment, but on the basis that it belongs to himself, considerations which would govern the application of limitation are substantially different; and in such a case, the transfer being void ab initio the possession of the transferee is adverse from the date of the transfer. That is how Mr. Tatachari has attempted to avoid the application of Article 134B in the present case. There can be no doubt that if the assumption made by Mr. Tatachari is well founded the Appellants title to the three transactions in question would have to be upheld.

7. The Supreme Court did not accept Mr. Mukherjee''s view on the principle laid down by the Privy Council in the case Ghanasambandha Pandara Sannadhi v. Velu Pandaram 27 I.A. 69 and Damodar Das v. Adhikari Lakhan Das C.W.N. 889. At para. 20 of the said judgment the Supreme Court repelled the argument of the learned Advocate for the Appellant before the Supreme Court and held that Article 134B of the Limitation Act as amended after 1929 will apply in respect of all the transfer made by the shebait either in personal capacity or as a shebait. In para. 20 their Lordships stated as follows:

Confining ourselves to the first column of Article 134-B at this stage, the question which we have to decide is does this Article permit any distinction to be made between transfers effected by a previous manager on the basis that the property transferred belongs to the religious endowment and those made by him on the basis that the said property is his own private property? If the property is transferred by the manager on the basis that it belongs to the endowment, Article 134-B clearly applies; but does it make any difference to the application of Article 134-B if the transfer is made on the other basis that the property belongs not to the endowment, but to the manager himself? In either case, the successor who challenges the alienation, will have to prove that the property in fact belongs to the religious endowment. Once that is proved, it is necessary for him also to show that the transfer was made on the basis that the property belonged to the religious endowment. In our opinion, such a limitation cannot be read in the words used by the said Article. Article 134-B applies to all case where it is shown that the immovable property was comprised in the endowment and that it has been transferred by a previous manager for a valuable consideration. The successor has to prove three facts : (1) that the property belongs to the religious endowment : (2) that it was transferred by a previous manager and (3) that the transfer was for a valuable consideration. The character of the representations made by the previous manager in regard to his relation with the property which is the subject-matter of transfer, is irrelevant for the purpose of Article 134-B. All transfers made would fall within Article 134-B if the three essential facts are proved by the successor of the

transferor manager of the Hindu religious endowment. Therefore, we do not think that Mr. Tatachari is justified in contending that the transfers with which we are concerned in the present appeal fall outside the purview of Article 134-B inasmuch as they are effected by the alienors on the representations that the properties transferred belonged to them as their separate properties. On the findings recorded by the High Court, it is clear that the properties belonged to the temple; that they have been transferred by person who must be deemed to be the previous managers of the temple and that they have been transferred for valuable consideration. The present suit has been brought against Respondents Nos. 1 to 3 who are appointed trustees of the temple by Respondent No. 4; and so, all the ingredients prescribed by the first column of Article 134-B are satisfied. That is why we must reject the ingenious argument urged before us by Mr. Tatachari that Article 134-B does not apply to the present case.

8. In view of the specific rejection of the argument advanced by the learned Advocate for the Appellant by the Supreme Court based on the case Hemanta Kumari v. Iswar Sridhar Jiew (Supra) we are of the opinion that the case Hemanta Kumari v. Iswar Sridhar Jiew cannot now be applied in the facts and circumstances of the present case and that the starting point of the limitation will run from the date of transfer and not from the date of death of the transferor. Applying the principle laid down in the case it appears to us that the three facts which are relevant for consideration have been proved against the Appellant. It has been held that the property belonged to the absolute debottar. It was also held that the transfer was for a valuable consideration. The character of the representation made, therefore, by the previous manager in regard to his relation with the property is irrelevant for the purpose of consideration of the application of Article 134-B of the Act. All the transfers of the debottar property will come within the mischief of Article 134-B if the three essential elements in the judgment are proved by the successor of the transferor and the starting point of the limitation will be from the date of the death of the transferor. Admittedly, in this case, Kalobaran died on Jaistha 1361 B.S. that is, in 1954 and the suit was brought immediately thereafter on December 8, 1954, that is within 12 years from the date of death of Kalobaran who was the shebait and who made the transfer as his personal property on February 4, 1921 and after the death of Kalobaran, the last heir of the other shebaits filed the suit for recovery of possession.

9. In our opinion, therefore, the appeal must fail and is dismissed. There will be no order as to costs.

G.N. Ray, J.

10. I agree.