Sati Prasad Garga and Others Vs Gobinda Chandra Shee

Court: Calcutta High Court

Date of Decision: Nov. 28, 1928

Citation: 121 Ind. Cas. 673

Hon'ble Judges: Mallik, J; Cuming, J

Bench: Division Bench

Judgement

Cuming, J.
In the suit out of which this appeal arises, the plaintiff sued for possession of some 8 bighas of land which was specified as

settlement dags Nos. 823, 918, 919 and 700 and further for a perpetual injunctionrestraining the defendants from interfering with the plaintiff"s

possession after a declaration that the entry in the Record of Rights is erroneous ultra virus, and not binding on the plaintiff.

2. The plaintiff"s case is briefly this--that the lands in dispute so far as dags Nos. 823, 518 and 919 are concerned were taken settlement of by

some 5 persons so long ago as July, 1850. One of these five persons was one Gaya Narayan Shee, the grandfather of the plaintiff : that the plaintiff

inherited the land in suit which formed part of the demised land as heir of his grandfather, and that he and his predecessors-in-interest had been in

possession all along. With regard to the dag No. 700, he states that he purchased it from Madhab Kandar in 1316 and had been inposeejgion of

the same since that date and that htfllad executed a kabuliyat in favour of the Govern ment khasmehal department, as this dig No. 700 was found

to be included in the Government khas mehal being described as bund surplus land of the Government. The defendants resisted his claim and

contended that the lands in suit so far as dags Nos. 823, 918 and 919 were concerned were recorded in their names in the Settlement Record of

Rights. They contended that the amalnama was not genuine and further that the dags Nos. 823, 918 and 919 had not been included in the

amalnama. With regard to dag No. 700 the defendants seemed to contend that the Government had no title to any portion of dag No. 700. They

further argued that the suit was barred by limitation, the period of limitation applicable to the case being the special law of limitation provided by

Article 3, Schedule III of the Bengal Tenancy Act.

3. The trial Court and also the lower Appellate Court found all the issues in favour of the plaintiff and decreed the suit. The defendants have

appealed to this Court.

4. The first point which has been urged by Mr. Bose, who appears on behalf of the appellants, is that the suit is barred by limitation. He would

maintain that the period of limitation provided for the suit is that provided (by the Bengal Tenancy Act and that Section 184 of the Bengal Tenancy

Act would exclude this suit from the operation of Section 14 of the Limitation Act. In order to understand Mr. Bose"s point clearly it would be

necessary to state a few more facts. The suit was instituted on the 8th of December, 1922, in a Munsif a Court. The period of limitation would

normally expire on the 22nd November, 1923. Therefore, apparently at the time when the suit was instituted in the Munsif a Court at Tamluk it

was within time. A question, however, was raised by the defendants as to the valuation of the suit. After an enquiry made by the Munsif it was

found by him that the value of the suit was beyond his pecuniary jurisdiction and, on the 22nd December, 1923, he returned the plaint to the

plaintiff to be presented before the proper Court. On the 2nd January next it was presented in the Court of the Subordinate Judge at Midnapur. I

may here note that the Civil Courts were cased on the 3rd December and remained closed up to the 2nd January. The 2nd January was the re-

opening day of the Civil Courts. It will be seen, therefore, that on the day when it was presented in the Court of the Subordinate Judge at

Midnapur that suit Was out of time, time having expired on the 22nd November, 1923. The plaintiff, however, called to his aid Section 14 of the

Limitation Act, and contended that he was entitled to exclude the period, during which he had been prosecuting in good faith his suit in the Court of

the Munsif at Tamluk. Both the lower Courts have found that he was entitled to exclude this period and hence his suit was within time. Mr. Bose

admits that if the plaintiff is entitled to exclude this period the suit is within time. But Mr. Bose contends that 8. 14 of the Limitation Act does not

apply and he is not entitled to exclude the period. Mr. Boae relies on Section 184 of the Bengal Tenancy Act. Section 184 states that the suits,

appeals and applications specified in Schedule III annexed to this Act shall be instituted and made within the time prescribed in that schedule for

them, respectively; and every such suit or appeal instituted, and application made, after the period of limitation so prescribed, shall be dismissed

although limitation has not be pleaded."" Mr. Bose would argue from this that Section 14 of the Limitation Act has no application. Section 184 of

the Bengal Tenancy Act, however, to my mind, provides the period of limitation. Section 14 of the Limitation Act provides not the period of

limitation but means to compute that period which to my mind is an entirely different thing. A reference to Section 185 of the Tenancy Act will, I

think, make it quite clear that Section 14 of the Limitation Act does apply. Section 185 states that: ""(1). Sections 7, 8 and 9 of the Indian

Limitation Act, 1877, shall not apply to the faults and applications mentioned in the last foregoing section. (2) Subject to the provisions of this

chapter the provisions of the Indian Limitation Act, 1877, shall apply to all suits, appeals and applications mentioned in the last foregoing section.

Now, it seems to me that if it were the intention of the Legislature that Section 14 would not apply to suits, etc. mentioned in Section 181 of the

Bengal Tenancy Act, the Legislature would have stated so, because it specifically excludes Sections 7, 8 and 9, and if it desired to exclude Section

14, nothing would have been easier than to add this section to the list of sections, which were excluded, and I cannot see how Section 184 of the

Bengal Tenancy Act excludes the application of Section 14 of the Limitation Act. The point is made still clearer by a reference to Section 29 of the

Limitation Act. This section has been amended recently in 1922. It provides that: ""Where any special or local W.W. prescribes for any suit, appeal

or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of Section 3 shall apply, as

if such period were prescribed therefore in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit,

appeal or application by any special or local law (a) the provisions contained in Section 4, 83, 9 to 18 and Section 22 shale apply only in so far as

and to the extent to which, they are not expressly excluded by such special or local law."" As I read this, e. 4, Sections 9 to 18 and Section 22

would apply unless they are expressly excluded by any special or local law. By the expression ""expressly"", I think, it is meant that express

reference is made to the specific section in the Act: and that, unless such reference is made to the sections and by that reference they are expressly

excluded, then they would apply. I have no hesitation in coming to the conclusion that Section 14 of the Limitation Act does apply to the present

suit, and in view of the fact the plaintiff is clearly within time.

5. Mr. Bose has further contended with regard to the question of limitation that it has not been found that the plaintiff was in good faith prosecuting

the suit in the Munsifs Court. Whether a person is acting in good faith or bad faith is clearly a question of fact and there is on this point a specific

finding by the learned Judge : see page i4 of the paper-book, lines 5 and 6, where the learned Judge states: ""In such circumstances it cannot be

said that the plaintiff in bad faith gave a lower price."" Reading this portion of the judgment, I think it is quite clear that the learned Judge means to

gay that the plaintiff gave the price that he did in good faith.

6. Mr. Bose then proceeds to contend further that the learned Judge in deciding this point had not got in his mind the meaning of the expression

good faith."" ""Good faith"" is specifically denned in the Limitation Act as follows: ""Nothing shall be deemed to be done in good faith which is not

done with due care and attention."" Now the learned Judge was dealing with a section of the Limitation Act and there is no doubt that the

expression ""good faith"" is used with a particular meaning in this Act. But we must presume that the learned Judge in dealing with the expression

good faith,"" as used in the Limitation Act was perfectly well aware of the particular definition of the expression ""good faith,"" which will be found in

the Limitation Act, and, therefore, when be found that the Plaintiff prosecuted his suit in good faith, he found that he prosecuted it with due care

and attention.

7. Mr. Bose has then argued that the learned Judge has wrongly placed the burden of proof on the defendant. At page 14, line 45, of the paper

book the following statement of the learned District Judge appears : ""The lands in suit are claimed by plaintiff as part of his holding; defendants

must prove according to the ruling in Bajendro Kumar Bose v. Mohim Chandra Chose (I) that it is outside the plaintiff''s jote"" Mr. Bose contends

that, in so doing the learned Judge has placed the burden of proof on the wrong party. He contends, I think rightly, that it was for the plaintiff to

prove that the land lay within his jute and not for the defendants to prove that it lay outside. I do not, however, think that this is really material. No

doubt, the learned Judge was wrong in stating that the Vattaen of prooi lay on the defendants. But, as has been pointed out by their Lordships of

the Judicial Committee of the Privy Council, the question on whom the burden of proof should fall is of very little importance when evidence has

been gone into by both sides. When one reads the judgment, it will be seen that the learned Judge really put the burden of proof on the plaintiff. He

was aware, as would be quite clear from line 36 at page 15 of the paper book, that the Record of Rights was in favour of the defendants and it

was for the plaintiff to rebut the presumption arising from the entry in the Record of Rights. He deals with the evidence on that footing and finally,

finds that the presumption of the Record of Rights hag been rebutted.

8. Mr. Bose next argues that the learned Judge has not considered whether the lands in question are covered by the amalnama. As far as I can see,

reading the judgment of the learned District Judge, it was not disputed in the lower Appellate Court that the lands in dispute were covered by the

terms of the amalnama, Sa far as the amalnama was concern ad, the only question raised before the learned District Judge was whether the

amalnama itself was or was not genuine and it was not disputed before him whether the lands in dispute were or were not covered by it. I do not

think, therefore, that the finding of thelearn-ed Judge that the three plots Nos. 823, 918 and 919 belong to the plaintiff has been vitiated by any

erroneous proposition of law that he put before himself and apparently adopted with regard to the burden of proof.

9. Mr. Bose lastly argued that dag No. 700 has not been properly dealt with and that the learned Judge disposed of dag No. 700 in two lines. No

doubt the learned Judge has not dealt with dag No. 700 at any length as he has done with regard to the other three dags. The explanation is, I

think, that dag No. 700 is about a eottah in area, while the area of the remaining three dags amounts to some eight bighas: it is quite possible that

the parties did not attach very much importance to what amounts to 1/160 of the whole and very few arguments were addressed to the learned

Judge. However, he has held that the plaintiff has proved his possession and his purchase from Madhab Kandar. This purchase was in 1316, more

than 12 years before the institution of the suit. I do not think that it is necessary to find anything further.

10. The result is this appeal must fail and is, dismissed with costs.

Mallik, J.

11. I agree.