

(1924) 05 CAL CK 0006

Calcutta High Court

Case No: None

Haripada Haldar

APPELLANT

Vs

Barada Prasad Roy Chowdhury
and Others

RESPONDENT

Date of Decision: May 8, 1924

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 173
- Civil Procedure Code, 1908 (CPC) - Section 47
- Limitation Act, 1963 - Article 166

Citation: (1924) ILR (Cal) 1014

Hon'ble Judges: Pearson, J; Graham, J

Bench: Division Bench

Judgement

Pearson and Graham, JJ.

This appeal is directed against an order of the 2nd Additional District Judge of the 24-Parganas confirming the order of the Munsif, 4th Court, Diamond Harbour, dismissing an application for setting aside a sale in execution of a rent decree. The judgment-debtor applicants, now appellants, with a large number of co-sharers held under the decree-holder, Barada Prasad Roy Chowdhury, a chak comprising an area of 147 bighas bearing a yearly rental of Rs. 183-12. The said Barada Prasad sued the tenants, the applicants, and their co-sharers for arrears of rent and obtained a decree on the 28th August 1917. The decree was in due course put into execution on the 18th January 1918 and the chak in default being put up to sale was purchased by one Jadu Nath Sarma on the,2nd July 1918. The judgment-debtor Haripada and others then applied to have the sale set aside and assailed both the decree and the sale on various grounds. One of the points for determination was whether the application was barred by limitation, an the finding of the Munsif was that the case was governed by Article 166 of the Limitation Act, and that the application was time-barred, and "he accordingly dismissed it with costs. On appeal,

the learned Additional District Judge confirmed the decision of the Munsif holding that Article 166 and not Article 181 was applicable to the case, and dismissed the appeal with costs. The judgment-debtors, Haripada Haldar and others, then filed this Second Appeal.

2. A preliminary objection has been taken on behalf of the respondents to the hearing of the appeal first, on the ground that insofar as the application was one u/s 173 of the Bengal Tenancy Act, no appeal lies either in this Court, or in the Court of first appeal; and secondly, that the appeal is not competent by reason of non-joinder of parties, the heirs and legal representatives of one of the respondents (No. 10) Ananda Charan Haldar, not having been brought on the record. We do not think it is necessary to go into these matters because we are satisfied that the appeal fails upon the merits. On the merits the sole point for determination is whether the Courts below have rightly held that the application was barred by limitation. The execution sale took place on the 2nd July 1918 and the application for setting aside the sale was made in August 1920, i.e., some 2 years later. Under Article 166 the period of limitation is 30 days, whereas under Article 181 it is three years. If the former is applicable, the application was clearly time-barred, while if Article 181 applies it was within time. In our judgment the Courts below have rightly held that the case is governed by Article 166. The rulings which have been referred to in support of the contrary view--Chand Moni Dasya v. Santa Moni Dasya (1897) 1 G.W.N. 534 and Chan drama Mai v. Maharaja of Dumraon (1916) 38 Ind. Cas. 209--were decided under the Act as it formerly stood before the passing of the present Limitation Act when Article 166 was restricted to a particular class of applications. That article as now worded is very much wider and is quite general in its terms, governing all applications to have an execution sale set aside. Indeed, it is arguable having regard to the extremely wide wording of the Article that it covers the case applications made u/s 173 of the Bengal Tenancy Act. But be that as it may, it is clear that an application u/s 173, Bengal Tenancy Act, is cognizable u/s 47, Code of Civil Procedure, (see Chand Mani Dasya v. Santa Moni Dasya (1897) 1 C.W.N. 534, relating to Section 244 of the old Civil Procedure Code), and that being so the operation of Article 166 will be attracted. This view accords moreover with the fitness of things as it is manifestly anomalous that the period of limitation for setting aside a sale under the Bengal Tenancy Act should be so long as three years, whereas under the CPC it is only 30 days. As pointed out in Satish Chandra Kanungoe v. Nishi Chandra Dutta I.L.R (1919) Cal 975, the policy of the Legislature appears to be that questions arising in execution should be brought before the Courts and decided with the least possible delay. In the present instance nearly two years elapsed before the application was made.

3. For the reasons stated, the appeal in our judgment fails and must be dismissed with costs. We assess the hearing fee at two gold mohurs.

4. An application is also made u/s 115, Civil Procedure Code, in the alternative. Inasmuch as we have disposed of the appeal on the merits, it is not necessary to pass any order u/s 115, Civil Procedure Code.