(1868) 12 CAL CK 0014

Calcutta High Court

Case No: None

Rani Swarnamayi		APPELLANT
	Vs	
Shashi Mukhi Barmani and Others		RESPONDENT

Date of Decision: Dec. 17, 1868

Final Decision: Dismissed

Judgement

1. The Facts of this case are simply these. The appellant is a zamindar. Those whom she represents had granted a putni talook, and the putnidars had fallen into arrear. The zemindar, the appellant, pursued her remedy under Regulation VIII of 1819, and brought the talook to sale. It sold for a sum greatly in excess of the rent in arrear. The purchaser was put in possession of the talook. Out of the purchase-money the arrears were paid, and the balance, in the ordinary course, remained in the Collector''s hands for the benefit of those who were entitled to it. A suit was then brought to set aside the sale of this putni talook, on the ground of irregularity; and we must assume that it was correctly set aside by the judgment of the Court below. The first judgment on the case was on the 26th December 1860. The appellant brought her appeal in the High Court, and the final judgment, dismissing her appeal, was on the 30th June 1863. The effect of the judgment was, that she had to pay back the purchase-money to the purchaser, with interest; that the putnidars were again put into possession of the talook; and that they recovered the mesne profits, during the period in which they were out of possession, from the purchaser. The appellant then brought the present suit for recovery of the arrears of rent. She brought it in the Collector''s Court, as in an ordinary case; and must, therefore, we apprehend, be taken to have brought it under Act X of 1859. She was then met by the defence that the suit was out of time; that it was barred by the 32nd section of that Statute; the construction put on that enactment being that the suit should have been brought within three years from the time on which these arrears first became due, viz., the last day of the year for which the rents constituting them had accrued. The result of the decision is, that she has not only lost the remedy

which Regulation VIII of 1819 gave her, but that she has no other remedy for those arrears of rent. If that decision is founded upon grounds which cannot be shaken, it certainly is a very unfortunate result, and a result, which obviously works a great injustice; for the putnidars have got back their putni, and have, at the same time, relieved themselves from the obligation of paying, for that period, the very rent upon which they held it. The case of the appellant has been argued on various grounds. Mr. Cave has argued that this clause is to be qualified by introducing certain clauses of the old Regulation of Limitation of 1793. He has also argued that if those clauses can no longer be imported into the consideration of the case, it falls within one of the exceptions imported into the existing Act of Limitation, the Act XIV of 1859.

2. Their Lordships are of opinion that if this case had arisen in an ordinary Court of law, and the Statute of Limitations to be applied was Act XIV of 1859, there could be no doubt at all upon the question; and that it would not be necessary to fall back upon the exception referred to by Mr. Cave, because it seems to their Lordships to be perfectly clear that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this sum of money revived; and whether that time be taken to be the date of the first decree or the date of the final decree, the present suit would, in either case, have been brought in time. They do not, however, think it necessary to decide that either that Act, or the particular exception in it, is to be brought in to qualify the peculiar and special law of Limitations introduced by the Act of 1859, because they think that, upon the fair construction of the 32nd section of that Statute (Act X of 1859) the time had really not run. Their Lordships'' view of the case is this; that, upon the setting aside of this sale, and the restoration of the parties to possession, they took back the estate subject to the obligation to pay the rent; and that the particular arrears, of rent claimed in this action must be taken to have become due in the year in which that restoration to possession took place. It follows that upon the language of the 32nd section of Act X of 1859 [q.v. supra 2 B.L.R. 12], the appellant was not barred from her remedy. Their Lordships further authorize me to say that they do not concur in the position of the High Court, that the appellant can be said to have committed an act of trespass, because, when she pursued the remedy, which was clearly competent to her, if it had been regularly pursued, she inadvertently omitted one of the formalities prescribed by the Act, and that her proceedings, therefore, became inoperative. Their Lordships cannot treat this as an act of trespass, or hold, with the High Court, that in bringing this suit she is a person seeking to take advantage of her own wrong. They must also respectfully dissent from another statement of the learned Judges of the High Court, to the effect that the appellant might have sued for these arrears pending the proceedings to set aside the sale of the putni. It is clear that until the sale had been finally set aside, she was in the position of a person whoso claim had been satisfied; and that her suit might have been successfully met by a plea to that effect. On these grounds, their Lordships are prepared to recommend

to Her Majesty that the appeal be allowed with costs; that the judgment of the High Court be reversed; and in lieu thereof, that the appeal to that Court be dismissed, and the judgment of the Court below affirmed with costs.