

(1919) 07 CAL CK 0022**Calcutta High Court****Case No:** None

Bejoy Lal Seal and Others

APPELLANT

Vs

Nayan Munjari Dassi and Others

RESPONDENT

Date of Decision: July 22, 1919**Acts Referred:**

- Bengal Land Revenue Sales Act, 1859 - Section 31

Citation: 55 Ind. Cas. 639**Hon'ble Judges:** Panton, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

1. This is an appeal by the plaintiffs in a suit for declaration of title to the surplus sale-proceeds of a sale held under the Revenue Sale Law, 1859. The case for the plaintiffs is that holding No. 130, Division 1, Sub-Division 17, within the jurisdiction of the Collector of 24-Pergannas, was sold for arrears of revenue on the 16th March 1908 for Rs. 11,100 and that after satisfaction of the dues of the Government, Rs. 11,050 approximately is in deposit in the Collectorate. The exact sum, as appears from the written statement of the Secretary of State who was originally made a respondent, is Rs. 11,085-7-6. At the time of the sale, the registered proprietors were members of the Paikpara Raj family of Singhs, Girish Chandra, Purna Chandra, Kanti Chandra, Indra Chandra and Sarat Chandra. The plaintiffs assert that although the Singhs were registered proprietors, they had no subsisting interest in the holding on the date of default or of sale. The allegation is that the property had vested in the Seals and on a partition amongst the members of the Seal family, effected many years ago, had passed into the hands of Govinalal Seal. The plaintiffs, the representatives-in-interest of Govinalal Seal, applied to the Collector to withdraw the balance of the sale-proceeds, but the application was refused on the 19th October 1909. They accordingly instituted this suit on the 5th September 1916 for declaration of their title to the property at the time of the sale and consequent thereto, their title to the surplus sale-proceeds. The plaintiffs claimed an eight-ninth

share in the holding, the remaining 1/9th share, it is said, belongs to the 11th defendant who did not join as plaintiff. They also joined as defendants the representatives of the Paikpara Raj family, as also the representatives of the Seal family other than the heirs of Govinlal Seal, The Secretary of State for India was also joined as a defendant. But, subsequently, on the 16th October 1917, the plaintiffs prayed that the name of the Secretary of State for India might be removed from the category of defendants. The suit was tried on the merits and was dismissed as barred by limitation under Article 120 of the First Schedule to the Indian Limitation Act. The present appeal has been preferred by some of the plaintiffs who claim 7-9ths share in the estate and in the money in deposit. The 11th defendant who claims an 1/9th share and the 7th plaintiff who claims an equal share are respondents. The representatives of the Seals and the Singhs have also appeared before us, In our opinion, the suit should not have been dismissed.

2. There can be no question that the Collector properly refused to pay the surplus sale-proceeds to the plaintiffs and his order of the 19th October 1909 is based upon a correct interpretation of Section 31 of Act XI of 1859. It was pointed out by this Court in the case of Secretary of State for India v. Marjum Hosein Khan 11 C. 359 that u/s 31 an assignee of the recorded proprietors is not their representative, so that the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, the money held in deposit on account of the recorded proprietors, Mr. Justice Pigot pointed out that the section does not contemplate payment to an assignee who claims to receive the money on his own behalf. It does not cast on the Collector the duty of giving effect to, and, as a preliminary, of verifying of, such assignments. But although the order of the Collector was right, it does not follow that the plaintiffs are not entitled to the declaration which they seek. The Legislature did not contemplate that the title of unrecorded proprietors should be lost by the sale to the extent that they would not be entitled to receive the surplus sale proceeds, even if they could establish in the Civil Court, as against the recorded proprietors, that they were entitled to the estate at the time of the sale. In the case before us, neither the Singhs who are the representatives of the last recorded proprietors nor the Seals who admitted that on a partition the property passed to one member of the family, put forward any claim to the surplus sale-proceeds. Consequently the surplus sale-proceeds belong to the plaintiffs and the 11th defendant. This is established by the uncontradicted testimony of the witnesses who have been examined in the case. In these circumstances, the proper decree to make is to declare that the plaintiffs were entitled to 8-9ths share and the 11th defendant to 1/9th share in the estate at the time of the sale and are consequently entitled to the surplus sale-proceeds in the same proportion. The plaintiffs and the 11th defendant will be at liberty to apply to the Collector on the basis of this decree. If the Collector refuses to pay the surplus sale-proceeds, the plaintiffs and the 11th defendant may have their remedy, but it is not for us to advise them what course they should pursue if such a contingency should arise. It is sufficient to hold that, in

so far as the present litigation is concerned no question of limitation arises. If Article 120 is held applicable, time should run against the plaintiffs from the date when the right to sue accrued. The right to sue does not accrue till the right to obtain relief by way of declaration has been denied. Events show that there has not been a dispute amongst the parties entitled to the money antecedent to the suit and during the course of the litigation, the parties appear to have agreed that they were entitled to the estate and the money value thereof in the shares already set out.

3. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and a decree made in this Court in the terms indicated above, There will be no order for costs in this Court. The order of the Court below as to costs will stand.