

44 Ind. Cas. 567

Calcutta High Court

Case No: None

Monmotho Nath Laha
and Others

APPELLANT

Vs

Annoda Prosad Roy
and Others

RESPONDENT

Date of Decision: Jan. 16, 1918

Acts Referred:

- Limitation Act, 1963 - Article 134

Citation: 44 Ind. Cas. 567

Hon'ble Judges: Richardson, J; Beachcroft, J

Bench: Division Bench

Judgement

Richardson, J.

The present appeal is preferred from the judgment and decree of the Subordinate Judge of Burdwan, dated the 28th May 1915, affirming the decree of the Munsif of Bardwan, dated the 30th March 1914. The plaintiffs in the suit, who are the appellants before us, are the shebait of a certain idol and they sue the defendants to recover possession of certain debutter property held by them under colour of a mokatari lease granted by the father of the plaintiffs, the previous shebait, in the year 1876. The sole question which arises is whether the suit, which was instituted on the 14th February 1913, is barred by the provision of Article 134 of the Schedule of the Indian Limitation Act of 1908. By that Article a suit to recover possession of Immovable property conveyed or bequeathed in trust or mortgage and afterwards transferred by the trustee or mortgagee for valuable consideration must be brought within 12 years of the date of the transfer. Prima facie the present suit falls within the Article and having been brought more than 12 years after the date of the lease to the defendants is out of time. The Courts below have so held. It has been contended on behalf of the plaintiffs that the transfer to the defendants having taken the form of a lease, the transfer is not a transfer within the meaning of Article 134 and that Article has no application. In support of this contention reliance has been placed upon the

oases of *Abhiram Goswami Mohant v. Shyama Charan Nandi* 4 Ind. Cas. 449 : 36 I.A. 148 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.J. 857 : 11 Bom. L.R. 1234 : 14 C.W.N. 1 : 19 M.L.J. 530 (P.C.) and *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose* 60 Ind. Cas. 683 : 38 I.A. 76 : 38 C. 526 : 16 C.W.N. 417 : 9 M.L.T. 448 : 8 A.L.J. 528 : 13 Bom. L.R. 421 : 14 C.L.J. 238 : (1911) 2 M.W.N. 281 : 20 M.L.J. 1145 (P.C.). These cases, however, were decided by the Judicial Committee under the Limitation Act of 1877, in Article 184 of which the word "transferred" was not used. As the, Article then stood, it applied only to properties "purchased" from the trustee or mortgagee and the period of limitation was 12 years from the date of the "purchase." It was held in *Abhiram Goswami's* case 4 Ind. Cas. 449 : 36 I.A. 148 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.J. 857 : 11 Bom. L.R. 1234 : 14 C.W.N. 1 : 19 M.L.J. 530 (P.C.) that the word "purchase" did not include a transfer by way of lease, even though the lease was a permanent lease. As to the second of the two cases, if regard be had to the course which it took, it will be found to be in respect of the present law an authority rather in favour of the defendants than in favour of the plaintiffs. The judgment of this Court which, was taken on appeal to the Privy Council was delivered in 1905 *Ram Kanai Ghose v. Rama Sri Sri Hari Narayan Singh Deo Bahadur* 2 C.L.J. 546. This Court held that the word "purchased" in Article 134 of the Act of 1877 was as applicable to a permanent lease, such as a putni lease, as to an absolute conveyance, and in so doing adopted the view taken in an earlier case decided in 1896, the case of *Nilmony Singh v. Jagabandhu Roy* 23 C. 536 : 12 Ind. Dec. (N.S.) 357. On the first hearing of the appeal to the Privy Council, the appeal was dismissed and the decision of this Court was affirmed. An application was, however, subsequently" made to their Lordships to review their judgment *Sri Sri Ishwar Shyam Chandjiu v. Ram Kanai Ghose* 14 C.W.N. 244 (244 notes) and on review the decision of this Court was reversed in 1911 on the ground that it was, as regards the meaning of the word purchased ", inconsistent with *Abhiram Goswami's* case 4 Ind. Cas. 449 : 36 I.A. 148 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.J. 857 : 11 Bom. L.R. 1234 : 14 C.W.N. 1 : 19 M.L.J. 530 (P.C.) which had been decided by their Lordships in 1909. As Article 134 is now worded, it is impossible to say that a transfer by way of a permanent lease is not within its scope. Apart from the dates it might seem that the language was altered for the express purpose of avoiding the effect of the ruling in *Abhiram Goswami's* case 4 Ind. Cas. 449 : 36 I.A. 148 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.J. 857 : 11 Bom. L.R. 1234 : 14 C.W.N. 1 : 19 M.L.J. 530 (P.C.). In fact it was apparently not intended to make any change in the law but only to state more clearly the law as it was at the time understood.

2. The further point taken, that; the plaintiffs had no cause of action till their father died, is also untenable on the authorities In *Madhu Sudan Mandal v. Radhika Prosad Das* 16 Ind. Cas. 927 : 17 C.W.N. 873 : 16 C.L.J. 840 the question was treated as concluded by the decision of the Privy Council in *Damodar Das v. Lakhan Das* 7 Ind. Cas. 240 : 37 I.A. 147 : 37 C. 885 : 12 C.L.J. 110 : 14 C.W.N. 889 : 20 M.L.J. 624 : (1910) M.W.N. 303 : 8 M.L.T. 145 : 7 A.L.J. 791 : 22 Bom. L.R. 632 (P.C.) The representation of the idol by the shebait is a continuing representation, and limitation runs against the idol continuously and not as against each shebait individually as and when he succeeds to the office, the

shebaita not being holders of successive life estates in the management or in the property of the endowment: *Prosunno Kumari Debya v. Golab Chand Baboo* 2 I.A. 145 : 14 B.L.R. 450 : 23 W.R. 253 : 3 Sar. P.C.J. 449 : 3 Suth P.C.J. 102 (P.C.); *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* 27 I.A. 69 : 23 M. 271 : 2 Bom L.R. 597 : 4 C.W.N. 329 : 10 M.L.J. 29 : 7 Sar. P.C.J. 671 : 8 Ind. Dec. (N.S.) 591 (P.C.).

3. It has next been contended, however, that *Abhiram Goswami's* case 4 Ind. Cas. 449 : 36 I.A. 148 : 36 C. 1003 : 10 C.L.J. 284 : 6 A.L.J. 857 : 11 Bom. L.R. 1234 : 14 C.W.N. 1 : 19 M.L.J. 530 (P.C.) must be taken to have settled what the law was before the Limitation Act of 1908 was passed and that the plaintiffs, therefore, are entitled to say that they have been deprived of a right of suit which they had under the preexisting law or that in some way they are entitled to treat the present suit as a suit not under Article 134 but as a suit to which some other Article applies. As the argument is put, in one aspect it is the last point over again, namely, that the plaintiffs had no cause of action till their father died in 1912. Even if this were so, it is obvious that they had no vested right of suit when the Act of 1908 was passed. In another, aspect the argument seems to be that their cause of action has at any rate been in some way changed. But if time ran against the idol, no change of substance has occurred in respect of the cause of action, That still depends, as it did before, on the unlawful alienation of the property by the plaintiffs' father and even if the defendants had to prove adverse possession, adverse possession would run against the idol under the old law just as it would under the new law: *Nilmony Singh v. Jagabandhu Roy* 23 C. 536 : 12 Ind. Dec. (N.S.) 357; *Damodar Das v. Lakhan Das* 7 Ind Cas. 240 : 37 I.A. 147 : 37 C. 885 : 12 C.L.J. 110 : 14 C.W.N. 889 : 20 M.L.J. 624 : (1910) M.W.N. 303 : 8 M.L.T. 145 : 7 A.L.J. 791 : 22 Bom. L.R. 632 (P.C.). The gist of this part of the argument seems to be that the Article of the Limitation Act applicable would previously have been Article 144 and not Article 134. But whether that be so or not, the whole of the contentions based on the change in the law really come to this, that the passing of the Act of 1908 has cut down and made shorter the period of limitation to which the plaintiffs would otherwise have been entitled. In such a state of things the relevant section of the Act, to which we must look, is Section 30. That section provides that "notwithstanding any thing herein contained, any suit for which the period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1877, may be instituted within the period of two years next after the passing of this Act or within the period prescribed for such suit by the Indian Limitation Act; 1877, whichever period expires first." The Act of 1908 was passed on the 7th August of that year and the period of two years, allowed by Section 30 expired before the suit was instituted. There is no other concession to which the plaintiffs are entitled and having regard to the law as it was understood to be in this country up to 1908, there is no hardship.

4. As a last resort, it has been argued that, at any rate, the minor plaintiffs are entitled to an extension of time under the provisions of Section 6 of the present Act. It may be doubted whether the provisions of Section 6 control those of section 30. But the true

answer to this argument seems to be that under the law as it now stands it must be taken that the time began to run in 1877 when the lease to the defendants was granted and that u/s 9 of the Act the time having once begun to run no subsequent disability or inability to sue stops it.

5. For the reasons indicated I am of opinion that this appeal fails and must be dismissed with costs.

Beachcroft, J.

6. I agree.