*P.C.**
1916
Jan. 31.

PRIVY COUNCIL.

NRITYAMONI DASSI

v.

LAKHAN CHANDRA SEN.

[ON APPEAL FROM THE HIGH COURT AT FORT WILLIAM IN BENGAL.]

Limitation—Limitation Act (XV of 1877), s. 14—Suspension of cause of action.

In this appeal their Lordships of the Judicial Committee affirmed, on the question of limitation, the decision of the High Court in the case of *Lakhan Chandra Sen* v. *Madhusudan Sen* which is reported in I. L. R. 35 Calc. 209.

APPEAL 70 of 1911 from a judgment and decree (6th December 1907) of the High Court at Calcutta in its Appellate jurisdiction, which reversed a judgment and decree (10th August 1906) of a Judge of the same Court in the exercise of its ordinary original Civil jurisdiction.

The defendants were appellants to His Majesty in Council.

The suit which gave rise to this appeal arose out of the following circumstances:—One Guru Charan Sen died in 1872 leaving a widow and three sons, Baney Madhub Sen, Money Madhub Sen and Chuni Lal Sen. The respondents are the descendants of Money Madhub, and the appellants are the widow and

* *Present*: VISCOUNT HALDANE, LORD PARMOOR, LORD WRENBURY AND MR. AMEER ALI.

two of the sons of Baney Madhub. Chuni Lal, the third son, died in November 1881. In 1896 some of his sons brought a suit to have their rights and interests ascertained and declared in his property consisting of "eight houses" in Calcutta, for possession of their shares, which had been for some years in the possession of the principal defendants, and for other relief. In that suit (882 of 1896) the present respondents were also made defendants: they, however, supported the claim of the plaintiffs, and also asked for a declaration that they, too, were entitled to a share in the property in dispute. The suit was tried in the High Court by Mr. Justice Henderson, who on 20th April 1903 found that the "eight houses" in suit never passed from the possession and ownership of Guru Charan Sen during his lifetime. He held also that a deed of declaration of 30th June 1891, and a deed of trust of 18th January 1892, upon which the defendants relied, were not real transactions, and were inoperative to pass any property. He, therefore, substantially decreed the plaintiffs' claim, and declared that the present respondents (some of the then defendants) were also entitled to a one-third share in the property. An appeal (29 of 1903) was then filed by those defendants who contested the suit, and that portion of the decree of HENDERSON J., which gave the relief asked for by the present respondents was, on 22nd February 1904, set aside on the ground, among others, that as suit was one for ejectment and not a partition suit, relief could not be given, as between two co-defendants.

The present suit was brought on 14th November 1904 by the respondents, Lakhan Chandra Sen and his brothers, the sons of Money Madhub, for a one-third share in the "eight houses," which had devolved on their father on the death of Guru Charan Sen. The

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defendants were the representatives of Baney Madhub Sen and Chuni Lal Sen.

The principal defendant who contested the suit was Nrityamoni Dassi, the widow of Baney Madhub Sen, whose defence was that the property in dispute belonged to her mother-in-law Surat Kumari Dassi; and that about the year 1891 Surat Kumari, in pursuance of a *bonâ fide* family arrangement, made a gift of her *stridhan* properties among the three different branches of the families of her three sons, in consideration of which gift, Baney Madhub Sen and Money Madhub Sen by a deed of covenant, dated 30th June 1891, transferred whatever right and interest, if any, they had in the property to Surat Kumari Dassi, who by a deed of trust, dated 18th January 1892, dedicated it to the family idols, and that she since that date had been in possession of the property as a trustee. She also pleaded that the suit was barred under the Limitation Act (XV of 1877).

The suit was dismissed by BODILLY J. on the ground that it was barred by the law of limitation; and on appeal by the plaintiffs (respondents) was heard by SIR FRANCIS W. MACLEAN C.J. and HARINGTON and FLETCHER JJ. who reversed the first Court's decision on the question of limitation.

The decision of the Appellate Court and also the judgment of BODILLY J., then appealed from on that question, will be found reported in the case of *Lakhan Chandra Sen* v. *Madhusudan Sen*, I. L. R. 35 Calc. 209.

On this appeal,

De Gruyther, *K.C.*, and *Ross*, *K.C.*, for the appellants.

Sir William Garth and *Edward F. Spence*, for the respondents.

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The judgment of their Lordships was delivered by

MR. AMEER ALI who, after stating the facts, continued: As their Lordships concur generally with the reasons given by the Appellate Court for overruling the plea of limitation, they do not wish to prolong the present judgment by dealing wth the question at any length. They desire, however, to observe that if the property belonged in fact to Surat Kumari, and was held by her all along in her own right, as has been the defendants' contention throughout the various stages of this long-drawn litigation in India, obviously no question of limitation arises; neither their father nor the plaintiffs had or have any title to it, and their suit must fail on that ground.

If, however, the "eight houses" never belonged to Surat Kumari, as is now conceded at their Lordships' Bar, if they always remained the property of Guru Sen and devolved on his sons by right of inheritance, then the declarations made by them in the "deed of covenant," which are now admitted to be wholly false, in no way altered the title. It did not purport to transfer any right: it was only an admission of a right which did not exist. There is no allegation, far less any evidence, that Surat Kumari pretended to exercise any right under that document adversely to the real owners until January 1892. It was after the execution of the trust deed of 1892 that Baney Madhub, purporting to act as one of the trustees, began to collect the rents and issues of the eight houses to the exclusion of the other co-sharers. Limitation would no doubt run against them from that time. But it would equally without doubt remain in suspense whilst the plaintiffs were *bonâ fide* litigating for their rights in a Court of Justice. They had in the suit of 1895 before Mr. Justice Henderson associated themselves with the plaintiffs in that action, and had asked for an adjudi-

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cation in those proceedings of their rights. A distinct issue was framed in respect of their claim, to which no objection seems to have been made by the appellant Nrityamoni; and the learned Judge who decided the case pronounced, with reference to their prayer, the following order:—

"The defendants, the representatives of Money Madhub, will be declared jointly entitled to a one-third share in the scheduled properties, and the Official Referee will make similar enquiries with regard to their share and the share of Nemye Charan Sen, as to mesne profits and the deeds, assurances, and other things which may be necessary. These defendants will be entitled to get possession of the shares to which they have been declared entitled."

It was an effective decree made by a competent Court, and was capable of being enforced until set aside. Admittedly, if the period during which the plaintiffs were litigating for their rights is deducted, their present suit is in time. Their Lordships are of opinion that the plea of limitation was rightly overruled by the High Court.

As regards the nature and effect of the deed of covenant of the 30th June, 1891, their Lordships have no hesitation in holding, in concurrence with the High Court, that it was wholly illusory; that it never operated to transfer any rights, nor in fact was it intended to do so; and that it was a mere device for deceiving the creditors of Baney Madhub and Money Madhub, and sheltering the property under their mother's name by making an acknowledgment of a right which never existed. All the facts and circumstances taken in conjunction with the statements in the document itself contradict the suggestion that it was part of a *bonâ fide* family arrangement.

Their Lordships are of opinion that the decree of the High Court in Suit 826 of 1904 is right, and should be affirmed.

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For these reasons, their Lordships are of opinion that the judgment of the High Court is right and that this appeal should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The appellants will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellants: *T. L. Wilson & Co.*

Solicitors for the respondents: *Downer & Johnson.*

J. V. W.

APPELLATE CIVIL.

Before Holmwood and Imam JJ.

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Jan. 11.

DALCHAND SINGHI

v.

THE SECRETARY OF STATE FOR INDIA.*

Land Acquisition—Godowns used as servants' residence—House or building whether part of—Acquisition of such godown alone, legality of—Land Acquisition Act (I of 1894) ss. 49 (1), 54—Practice—Appeal.

Godowns necessary as residence for servants are part and parcel of a building [within the meaning of s. 49 (*1*) of the Land Acquisition Act] being a most important part of that building for the purpose of letting it out to gentlemen as a place of residence.

The acquisition of such godowns would thus be an acquisition of a part of a house contrary to the provisions of the Act.

It has never been doubted that an appeal would lie in the case of such an order under that section.

Hasun Molla v. *Tasiruddin* (1) distinguished.

APPEAL by Dalchand Singhi, the claimant.

* Appeal from Original Decree, No. 397 of 1915, and Rule No. 929 of 1915, against the decree of H. P. Duval, Special Land Acquisition Judge, 24-Parganas, dated June 29, 1915.

(1) (1911) I. L. R. 39 Calc. 393.