

APPELLATE CIVIL.

Before Mookerjee and Walmsley JJ.

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Aug. 22.

SECRETARY OF STATE FOR INDIA

v.

GANGADHAR NANDA.

Suit—Limitation—Bengal Tenancy Act (VIII of 1885), ss. 104H, sub-s. (2), 184, 185—Limitation Act (IX of 1908), ss. 29, 15, sub-s. (2), applicability of—Civil Procedure Code (Act V of 1908) s. 80.

A instituted a suit under s. 104H of the Bengal Tenancy Act against the Secretary of State for India in Council on the 10th December 1910, in respect of a village, the Record of Rights of which was finally published on the 2nd June 1910. A took exception to the latter. Prior to the institution of the suit, A served a notice on the defendant as required by s. 80 of the Civil Procedure Code :

Held, that the suit was barred by limitation.

Held, also, that s. 15, sub-s. (2) of the Limitation Act which was made applicable to suits, appeals and applications mentioned in Schedule III annexed to the Bengal Tenancy Act by virtue of s. 185 sub-s. (2), could not possibly apply to suits instituted under s. 104H which were not mentioned in Schedule III. On a plain reading of the provisions of s. 185 of the Bengal Tenancy Act along with s. 15 sub-s. (2) of the Limitation Act, the latter could not be applied to extend the period of six months provided for the institution of suits under s. 104H of the Bengal Tenancy Act.

Rudhashyam Kar v. Dinabandhu Biswas (1), *Sharoop Doss Mondal v. Joggessur Roy Chowdhry* (2), *Dulhin Mathura Das Koer v. Dansidhar Singh* (3), *Srinivasa Ayyangar v. The Secretary of State for India* (4) referred to.

Dropadi v. Hira Lal (5) distinguished.

□ Appeal from Original Decree, No. 405 of 1914, against the decree of Achinta Nath Mitra, Subordinate Judge of Midnapore, dated March 26, 1913.

(1) (1913) 18 C. W. N. 31 ;

18 C. L. J. 533.

(2) (1899) I. L. R. 26 Cal. 564.

(3) (1911) 16 C. W. N. 904.

(4) (1912) I L R. 38 Mad. 92.

(5) (1912) I. L. R. 34 All. 496.

APPEAL by the Secretary of State for India in Council, the defendant.

The facts necessary for the purposes of this report are shortly these. On the 2nd June 1910, the Record of Rights in respect of the village of Dakhin Baraj was finally published. The respondent one Gangadhar Nanda took exception to the same. On the 10th December 1910, he instituted a suit under s. 104H of the Bengal Tenancy Act against the abovenamed defendant with reference to the aforesaid village. Prior to the institution of the said suit the plaintiff served a notice to the defendant in accordance with the provisions of s. 80 of the Civil Procedure Code, 1908. The plaintiff claimed the benefit of s. 15 sub-s.(2) of the Indian Limitation Act and contended that s. 29 of that Act and ss. 184 and 185 of the Bengal Tenancy Act made s. 15 sub-s. (2) of the Indian Limitation Act applicable to suits under s. 104H of the Bengal Tenancy Act. The defendant contended that the suit was barred under s. 104H sub-s. (2) of the Bengal Tenancy Act. On the 12th April 1913, the Court of first instance decreed the suit.

From that decision the defendant preferred this appeal to the High Court.

The Senior Government Pleader (Babu Ram Charan Mitra), for the appellant.

Mr. B. Chakravarti, Babu Sib handra Palit, Babu Kshirod Narayan Bhunia and Babu Dhirendra Kishore Roy), for the respondent.

Cur. adv. vult.

MOOKERJEE AND WALMSLEY JJ. This is an appeal by the Secretary of State for India in Council against a decree in a suit instituted by the respondent on the 16th December 1910 under section 104H of the Bengal Tenancy Act. The lands in suit are comprised in three

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villages—Dakhin Baraj, Uttar Digha and Dhai Kukuria. The Settlement Roll, to which exception was taken by the plaintiff, was published, in the case of the first village, on the 2nd June 1910, and in the case of the other two villages, on the 17th June 1910. As regards the claim in respect of the first village, objection is taken that the suit is barred under sub-section (2) of section 104H, which provides that a suit under sub-section (1) must be instituted within six months of the date of the certificate of final publication of the Record of Rights. This objection does not apply to the second and third villages, and for the reasons assigned in our judgment in *Secretary of State for India v. Digambar Nanda* (1) the case must be remitted to the Subordinate Judge for investigation, whether the plaintiff is an occupancy raiyat or a non-occupancy raiyat in respect of the lands comprised in these two villages and for ascertainment of fair and equitable rent payable in respect thereof. In respect of the lands of the village Dakhin Baraj, however, the question of limitation requires careful consideration.

The Record of Rights was finally published on the 2nd June 1910. The suit was instituted on the 16th December 1910, after the expiry of the period of six months prescribed by section 104H, sub-section (2). The plaintiff claims the benefit of section 15, subsection (2) of the Indian Limitation Act which provides that in computing the period of limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded. In the case before us, the plaintiff served a notice as required by section 80 of the Code of 1908 which provides that no suit shall be instituted against the Secretary of State for India in Council

(1) (1917) 27 C. L. J. 334.

until after the expiration of two months next after notice in writing has been delivered or left at the office of a Secretary to the Local Government or the Collector of the district. Consequently, if section 15, sub-section (2) of the Indian Limitation Act is held applicable to the case before us, it is plain that the suit is not open to objection on the ground of limitation. Now the term "prescribed" as used in subsection (2) of section 15 read with section 3 obviously means prescribed by the first schedule to the Limitation Act; consequently, this provision cannot, by its own force, extend the period of six months mentioned in section 104H sub-section (2) of the Bengal Tenancy Act. The plaintiff-respondent has thus been forced to argue that section 29 of the Indian Limitation Act and sections 184 and 185 of the Bengal Tenancy Act make section 15 sub-section (2) of the Indian Limitation Act applicable to suits under section 104H of the Bengal Tenancy Act. In our opinion, there is no force in this contention.

Section 29 (1)(b) provides that nothing in the Indian Limitation Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special law or local law now or hereinafter in force in British India. Section 184 of the Bengal Tenancy Act provides that the suits, appeals and applications specified in the third schedule annexed to the Act shall be instituted within the time prescribed in that schedule for them respectively, and every such suit or appeal instituted or application made after the period of limitation so prescribed shall be dismissed, although limitation has not been pleaded. Section 185, sub-section (1) then lays down that sections 7, 8 and 9 of the Indian Limitation Act of 1877 shall not apply to suits or applications mentioned in section 184. Section 185, sub-section (2)

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next provides that, subject to the provisions of Chapter XVI of the Bengal Tenancy Act, the provisions of the Indian Limitation Act of 1877, shall apply to all suits, appeals and applications mentioned in section 184; that is, suits, appeals and applications specified in the third schedule. It is plain beyond reasonable controversy that section 15(2) of the Indian Limitation Act, which is made applicable to suits, appeals and applications mentioned in the third schedule annexed to the Bengal Tenancy Act, by virtue of section 185, sub-section (2), cannot possibly apply to suits instituted under section 104H which are not mentioned in the third schedule. This view is supported by the decision in *Rudhasyam v. Dinabandhu* (1) where it was ruled that section 18 of the Limitation Act does not apply to an application under section 174 of the Bengal Tenancy Act. Much stress, however, has been laid on the decision of a Full Bench of the Allahabad High Court in *Dropadi v. Hira Lal* (2) where a question arose as to the applicability of the provisions of the Indian Limitation Act to proceedings in insolvency. That case is clearly distinguishable; but it may be observed that the decision has not always been regarded with favour: *Thakur Prasad v. Panno Lal* (3), *Manjuluri v. Singumakarti* (4), *Abu Backer Sahib v. The Secretary of State for India in Council* (5). There is also no analogy between the case before us and the decisions in *Sharoop Dass Mondal v. Joggessur Roy Chowdhry* (6), *Dulhin Mathura Das v. Bansidhar Singh* (7) and *Srinivasa Ayyangar v. The Secretary of State for India* (8). A question of the

(1) (1913) 18 C. W. N. 31;

18 C. L. J. 533.

(2) (1912) I. L. R. 34 All. 496.

(3) (1913) I. L. R. 35 All. 410.

(4) (1915) 18 Mad. L. T. 200.

(5) (1909) I. L. R. 34 Mad 505.

(6) (1899) I. L. R. 26 Calc 564.

(7) (1911) 16 C. W. N. 904.

(8) (1912) I. L. R. 38 Mad. 92.

description now before us must be determined by a reference to the terms of the special statute, and on a plain reading of the provisions of section 185 of the Bengal Tenancy Act taken along with section 15, subsection (2) of the Limitation Act, we feel no doubt whatever that section 15(2) cannot possibly be applied to extend the period of six months provided for the institution of suits under section 104H of the Bengal Tenancy Act. In our opinion the suit is barred by limitation in respect of the lands comprised in village Dakhin Baraj.

The result is that this appeal is allowed and the decree of the Subordinate Judge set aside. The suit will stand dismissed in respect of the lands in village Dakhin Baraj. With regard to the lands of Uttar Digha and Dhai Kukuria, the decree of this Court will declare that the plaintiff is a *raiyyat* and not a tenure-holder, and the case will be remitted to the Subordinate Judge to determine whether the plaintiff is an occupancy raiyat or a non-occupancy raiyat and then to ascertain the amount of fair and equitable rent payable by him according to his status. Each party will pay his own costs both here and in the Court below up to the present stage. The costs after remand will abide the result.

L. R.

Appeal allowed and case remanded.

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