

PRIVY COUNCIL.

P.C. ^o
1918

MANI SINGH MANDHATA

v.

Nov. 7. 8
Dec 3.

NAWAB BAHADUR OF MURSHIDABAD.

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

Limitation—Limitation Act (IX of 1879), Sch. I, Arts. 142, 144—Estate of disqualified proprietor under management of Court of Wards—Suit by proprietor to recover possession of property sold by Collector during Court of Wards management—Court of Wards Act (Beng. IX of 1879)—Purchaser's possession became adverse when obtained.

On 30th July, the appellant was declared to be a disqualified proprietor, and her estate was taken charge of by the Court of Wards under Bengal Act IX of 1879. By a deed of transfer dated 7th June 1890 part of the estate was sold by the Collector as manager to the father and predecessor in title of the respondent, and the purchaser obtained possession on 30th April 1891. On 1st August 1911 the Court of Wards withdrew from the management of the estate. In a suit brought by the appellant on 12th May 1912 to recover possession of the portion sold :—

Held, that before the transfer and until the respondent acquired possession, the estate was in possession of the appellant notwithstanding it was in the charge of the Court of Wards : limitation, therefore, ran against her not from the release of the estate from management by the Court of Wards, but from the date when the respondent obtained possession adversely to the appellant, and the suit consequently became barred after 12 years of such adverse possession.

APPEAL 86 of 1917 from a judgment and decree (26th February 1915) of the High Court at Calcutta which affirmed with a slight variation a decree (16th May 1913) of the Court of the Subordinate Judge of Midnapore.

^o *Present* : LORD PHILLIMORE, SIR JOHN EDGE AND SIR LAWRENCE JENKINS.

The plaintiff was the appellant to His Majesty in Council.

The only question on this appeal was whether the suit was barred by limitation on the facts which are sufficiently stated in the judgment of the Judicial Committee.

The Subordinate Judge held that the suit was barred in respect of all the property sued for, but the High Court (FLETCHER AND TEUNON JJ.) held that two of the villages sued for ought to be excepted from the first Court's decree as for them the plaintiff was suing as the *sebait* of an idol and therefore while affirming the rest of the decree he remanded the suit for trial on the merits so far as those two villages were concerned.

On this appeal,

De Gruyther, K. C., and *H. N. Sen*, for the appellant, contended that the suit was not barred by limitation whether it was governed by Article 142 or 144 of the Limitation Act: it only began to run from the time there was possession adverse to the appellant, and the possession of the Court of Wards was not adverse in the sense of those Articles of the Limitation Act. Under the Court of Wards Act, 1879, the appellant, as disqualified proprietor, could not have sued or been sued during the period the property was in charge of the Court of Wards. Reference was made to Part VII, and sections 51 and 55 of the Act, and to *Biseswar Roy v. Shoshi Shikareswar Roy* (1). The disqualified proprietor could not bring a suit until the property was released from the management of the Court of Wards: see *Tukaram v. Sujangir Guru* (2). When the property was taken charge of by the Court

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(1) (1889) I. L. R. 17 Cal. 688; (2) (1884) I. L. R. 8 Bom. 585.

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of Wards under section 6 (a) of the Act, a declaration was made that possession was taken because the owner was not competent to manage it. As long as the manager of the Court of Wards is in possession he is the only person empowered to bring any suit in respect of the property : see section 35 of the Act. Reference was also made to section 56.

A. M. Dunne, K. C., and Kenworthy Brown, for the respondent. The taking over of the property by the Court of Wards did not pass to the manager any title to it. The Court of Wards is only a statutory agent purely for the management of the property : see section 5. A suit like the present could be brought by the manager on behalf of the disqualified owner whose name would be used ; there is nothing in the Act to prevent such a suit being brought. " Court of Wards " is merely a name for the purpose of performing certain necessary acts in the management of the property of persons not themselves qualified to manage it. Section 51 of the Act must be read in the light of the intention of the Act, and does not relate to the bringing of any suit by or against the owner in possession of the property : it does not bar the owner from suing. Reference was made to sections 6, 9, 14, 15, 16, 18 and 35 which last named gives a right of possession to the manager to act in the name of the owner. The disqualification was not a disability under the Limitation Act. Limitation, therefore, ran from the time the property transferred was delivered to the purchaser, and not from the date of the release of the property from the Court of Wards.

De Gruyther, K. C., replied.

The judgment of their Lordships was delivered by
 Dec. 3. SIR LAWRENCE JENKINS. Raja Prithwi Nath Singh
 Mandhata died on the 4th October, 1882, without male

issue and was succeeded by his two widows. At his death he was heavily indebted, and on the 1st March, 1886, the widows presented a petition to the Commissioner of their division praying that he would recommend the Court of Wards to take charge of the estate. On the 30th July, 1886, the Court of Wards under section 27 of the Court of Wards Act, 1879, declared the widows to be disqualified proprietors under section 6 (a) of the Act, and by the same order declared under section 35 that it had determined to take under its charge the property of the widows and directed that possession be taken of the property on behalf of the Court.

On the 7th of June, 1890, a part of the property called Killa Nazagram was sold to the defendant's father and predecessor in title, and the transfer was executed by the Collector. The purchaser obtained possession admittedly not later than the 30th April, 1891. The defendant's father subsequently obtained a transfer of two villages called Pirote and Sukdubi, and this was executed by the Collector on the 11th of February, 1901.

On the 1st of August, 1911, the Court of Wards withdrew from the charge of the property. On the 31st May, 1912, the surviving widow instituted this suit impugning the two sales and transfers and praying that she might be restored to possession. At the first hearing 16 issues were framed.

The fight was whether the suit was barred by limitation. On the defendant's application under O. XIV, r. 2 of the Civil Procedure Code the Court tried this and two other issues first, and disposed of the suit as barred by limitation. On appeal, the High Court set aside the decree of the first Court in so far as it related to the two villages Sukdubi and Pirote comprised in the *kabala* of the 11th February, 1901, and ordered

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that the case be remanded to that Court to be dealt with according to the directions contained in the High Court's judgment, but in other respects affirmed the decree then under appeal.

From the High Court's decree the present appeal has been preferred. Though the grounds of appeal attack the procedure adopted at the trial, the argument before this Board has been limited to the question whether the plaintiff's claim to the properties comprised in the transfer of the 7th June, 1890, is barred by limitation.

The purchaser's possession began not later than the 30th of April, 1891, so that at the date this suit was instituted the defendant and his father, from whom he derives his liability to be sued, had been in possession of the property on the strength of their title more than 21 years. It is, however, contended that time did not run against the plaintiff during the period that the Court of Wards was, as it has been termed, in possession, and to lend the greater force to this contention it is argued that a disqualified proprietor has no right to sue so long as the property remains in charge of the Court of Wards. This curtailment of the rights of a disqualified proprietor depends on the provisions contained in Part VII of the Court of Wards Act. To meet this objection the Subordinate Judge held that the plaintiff came within clause (e) of section 6 of the Act, and so was unaffected by the restrictive provisions of Part VII. But this view cannot be supported: clause (e) had not been enacted when the widows were declared disqualified to manage their own property, and this declaration was expressly based on clause (a) of the section. But while this ground of decision is misconceived, the plea of limitation has been rightly held a bar to the suit so far as it relates to the property comprised in the transfer of 7th June, 1890.

Before that transfer and until the purchaser acquired possession under it, the plaintiff and her co-widow were in possession of the property, and none the less because it was in the charge of the Court of Wards. This possession was discontinued and the possession of the defendant's father began as a result of that transfer, and was continued without interruption for a period far in excess of the statutory limit of 12 years, first by the father and then by the defendant, his son, each claiming as of right and on his own behalf adversely to the plaintiff. These facts, standing alone, present a complete bar to the suit so far as it seeks the restoration of this part of the suit property; nor is the position altered because the plaintiff was a disqualified proprietor until the 1st August, 1911. The Limitation Act, it is true, recognizes and enumerates certain conditions as legal disabilities entitling the persons affected by them to an extended period of limitation. But the plaintiff's disqualification under section 6 (a) of the Court of Wards Act is not one of them, nor has any case been made, which could suspend or modify the ordinary law of limitation as applicable to this case. The objection taken in argument has been directed not to that part of the High Court decree which ordered a remand, but to so much of it as affirmed the decree of the Subordinate Judge, and the discussion at the Bar has been confined to the plea of limitation. Their Lordships, therefore, are not called on to consider any other question which may affect this litigation, and they wish to guard themselves against being supposed to have decided either directly or inferentially anything beyond that particular plea.

From the view they take of this plea, it necessarily follows that this appeal fails, and they will therefore

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humbly advise His Majesty that it should be dismissed, and the appellant must pay the costs of this appeal.

Appeal dismissed.

J. V. W.

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

Solicitor for the respondent: *G. C. Farr.*

CRIMINAL REVISION.

Before Teunon and Cuming JJ.

1918
 Aug. 26.

SITAL SINGH

v.

EMPEROR.*

Witness—Competency—Withdrawal of prosecution jointly by private vakil conducting the prosecution and the Court sub-inspector—Legality of the withdrawal and consequent discharge of the accused—Competency of accused as witness thereafter—Criminal Procedure Code (Act V of 1898), s. 494—Evidence of cocaine and gambling cases prior to the conspiracy charged—Statement of an accused made after arrest not amounting to a confession—Admissibility of statement—Evidence Act (I of 1872), ss. 10, 30 and 54—Conspiracy to cheat—Penal Code (Act XLV of 1860), ss. 120 B. and 420.

Where the prosecution against an accused was withdrawn with the consent of the Court, after the opening of the Crown case, by an application purporting to be signed by the Court sub-inspector and a private vakil, who was not appointed a public prosecutor by the Governor-General in Council or the Local Government, but was acting under the directions of the public prosecutor duly appointed for the district, and the accused was

* Criminal Revisions Nos. 604 to 608 of 1918, against the order of A. J. Chotzner, Additional Sessions Judge. 24-Parganas, dated April 27, 1918.