

PRIVY COUNCIL.

RANJIT SINGH BAHADUR

v.

MAHARAJ BAHADUR SINGH.

P.C.*
1918

May 30.

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

Chaukidari Chakaran Lands—Limitation Act, 1877, Sch. II, Arts. 113 and 144—Suit by patnidar to recover rights in, and to obtain a settlement of, chaukidari chakaran lands on resumption by Government and transfer of them to zemindar—Suit for possession or for specific performance—Whether rights were contractual—Transactions creating real right—Village Chaukidari Act (Beng. VI of 1870 s. 51).

In suits brought by the respondent claiming to recover and obtain as settlement of certain chaukidari chakaran lands in villages of which the appellant was the zemindar, it was contended that the suits were barred by limitation, and that question depended on whether they were suits for specific performance and governed by Art. 113 (three years) or for possession and governed by Art. 144 (twelve years) of the Limitation Act. There was no doubt that under the ruling of the Board in *Ranjit Singh v. Kali Dasi Debi* (1) the patnidar had, on resumption of the lands by the Government and transfer of them to the appellant, such rights in the land as he claimed :—

Held, that it did not follow that because such rights originally arose by virtue of a grant declared to be a contract within the meaning of section 51 of Bengal Act VI of 1870, they are therefore rights contractual in the sense that the contract by its terms creates or regulates the personal obligations and duties of the grantor in the circumstances that had arisen, which were not contemplated and necessarily not referred to at the time the grants were made. On the resumption of the lands by the Government the rights of the patnidar were those conferred on him by the estate and interest created by the patni leases, and it was these rights which were kept alive by section 51 of Bengal Act VI of 1870. The suits were not suits for

* *Present*: LORD BUCKMASTER, SIR JOHN EDGE, MR. AMEER ALI AND SIR WALTER PHILLIMORE, BART.

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specific performance of a contract, nor was the application of Art. 113 of the Limitation Act in any way suitable to them, no date having been fixed for performance, nor any notice given of refusal to perform a contract, for there was no unexecuted contract to be performed. A suit for specific performance is essentially a suit for enforcing a stipulation relating to property. The word "contract" itself primarily means a transaction which creates personal obligations, but it may, though less exactly, refer to transactions which create real rights. It is in this latter sense that the word was used in section 51, and the rights thereby reserved to the patnidars, comprehensively in the word "contracts" are real rights, the enforcement of which is secured not by a suit for specific performance, but by a suit for possession, and this is the character of the present suits. The period of limitation applicable therefore is twelve years prescribed by Art. 144 of the Limitation Act, and the suits were not barred.

APPEAL 83 of 1915 from a judgment and seven decrees (5th March 1913) of the High Court at Calcutta which reversed seven decrees (17th April 1904) of the District Judge of Birbhum, which had reversed one decree (25th May 1908) of the First Court of the Munsif of Rampurhat, and had affirmed six decrees (1st September 1908) of the Second Court of the Munsif of Rampurhat.

The defendant was the appellant to His Majesty in Council.

The appellant was the zemindar of Pargana Koer Pratap in the district of Birbhum and the suits in which the above decrees were made were brought against him by the respondent who is the patnidar of one moiety and darpatnidar of the other moiety of village Gopalpur, and patnidar of six other villages within the appellant's zemindari. Some of the lands in these villages included in the patnis and darpatnis were formerly held as chaukidari chakaran lands, but in June 1898 they were all resumed by the Collector under Bengal Act VI of 1870 and transferred to the appellant. The respondent, who was then a minor, thereupon became entitled as patnidar and darpatnidar respectively to

get possession of these lands, and to obtain from the appellant a settlement of them; but the appellant wrongfully retained possession of them and settled them with tenants, and the respondent thereupon, on 10th and 20th September 1904, instituted the suits out of which the present appeal arose against the appellant and others, the first suit as to village Gopalpur in the Court of the first Munsif of Rampurhat, and the six other suits as to the other villages in the Court of the second Munsif of Rampurhat, claiming possession and for a settlement of the lands and other reliefs.

In his defence the appellant pleaded (*inter alia*) that the suits were barred by limitation, and that was the only question material to this appeal. His contention was that they were not suits for possession under Art. 142 or 144 of the Limitation Act (in which case the period prescribed is twelve years, and the suits would be clearly in time) but were suits for specific performance of a contract which would be barred under Art. 113 of the Limitation Act after three years from the date fixed when the plaintiff has notice that performance is refused.

The first suit was heard by the first Munsif who held (*inter alia*) that the suit was one for possession and was not barred. The other six suits were heard together by the second Munsif who for the same reason came to the same conclusion.

The appellant appealed to the District Judge who dealt with the seven appeals in one judgment, and dismissed them on the ground that the decisions of the lower Courts as to limitation were right.

The appellant appealed to the High Court, and a Bench of that Court (RAMPINI and SHARFUDDIN JJ.) held that Art. 113 of the Limitation Act was applicable, but that the question whether the suits had been brought within three years of the respondent attaining

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his majority was a question of fact with which they could not deal on second appeal and they therefore remanded the suits to the lower Appellate Court to decide that question on the evidence. When the suits came again before the District Judge he remanded them to the Munsifs' Courts directing them to take evidence and decide. (a) whether the respondent was a minor at the time when the lands were made over to the appellant by the Collector; and if so (b) whether the suits had been instituted within three years of the respondent's attaining majority.

Both Munsifs, on this remand, found after hearing further evidence that the respondent was a minor when the cause of action arose, but they differed on the second question, the first Munsif finding that the suit was instituted within three years from the respondent's attaining majority, and the second Munsif finding that it was not.

The suits then again came before the District Judge who held that they were not instituted within three years of the respondent's attaining majority and dismissed them all with costs.

An appeal by the respondent to the High Court came before CHITTY and TEUNON JJ. who agreed with the District Judge that the suits had not been instituted within three years of the respondent's attaining majority, but they held that the suits were suits for possession, and not for specific performance; that the period of limitation was twelve years under Art. 144 of the Act; and that they were, therefore, within time. They said that this was the only question of law raised in the cases, and that such questions of fact as there were had already been concurrently decided in favour of the respondent, and they accordingly allowed the appeals and decreed the suits in the respondent's favour with costs throughout.

On this appeal,

De Gruyther, K. C., and E. U. Eddis, for the appellant, contended that the period of limitation applicable to these suits was that provided for suits for specific performance of a contract, namely, the three years period prescribed by Art. 113 of the Limitation Act. On resumption of the lands by Government and their transfer to the zamindar, the respondent, as patnidar and darpatnidar, had a contractual right to the chaukidari chakaran lands which was given him by section 51 of Bengal Act VI of 1870. That section was so construed by the Board in *Ranjit Singh v. Kali Dasi Debi* (1). The date from which limitation runs is the date of the grant to the zamindar. In the case cited, the High Court did not make a decree for possession, so presumably such suits as those were not considered to be suits for possession, but suits for specific performance. Reference was made to *Hari Narain Mozumdar v. Mukund Lal Mundal* (2), and to the form of transfer given in Bengal Act VI of 1870. The patnidar had no right to possession up to the time the Government resumed the lands. The High Court, it was submitted, should have held that the suits were barred by limitation.

Upjohn, K. C., and Sir William Garth, for the respondent, contended that the suits were suits for possession, and not for specific performance of a contract, and Art. 113 of the Limitation was not applicable. Even if that Article were applicable there was no date fixed for performance, and the respondent had no notice that performance was refused within three years of the institution of the suits. The word "contract" is a very flexible term. In the case of *Ranjit Singh v.*

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Kali Das Debi (1) this Board described the broader view of "contract" as being not a contract where personal obligations are incurred, but a right which a person was equitably entitled to in land as the patnidar in that case was held to be, and as, it is submitted, he is similarly entitled in the present case. In this case there is a right under the conveyance, but no contract such as the argument for the appellant suggests: the Court cannot deal with an implied contract such as is supposed to exist in the appellant's view of the case. Nor is there anything which could possibly be governed by Bengal Act VI of 1870, passed and put in force, as it was, a long time after the patnis were granted. The rights of the respondent were those conferred on him by the patni leases. There was no case for specific performance in that view. The period of limitation, it was contended, would be twelve years as prescribed by Art. 144 of the Limitation Act, and if so, the suits were admittedly not barred.

De Gruyther, K. C., said he had nothing to add to his contention.

The judgment of their Lordships was delivered by
 May 30. LORD BUCKMASTER. This is a consolidated appeal against seven decrees of the High Court of Calcutta, dated the 5th March, 1913. These decrees were made in seven suits instituted by the respondent on the 10th and 20th September, 1904, against the appellant and others claiming to recover possession and settlement of certain *chukidari chakaran* lands in villages of which the appellant is the zemindar. It is unnecessary to deal with the history and vicissitudes of the litigation, as the only question that now arises for determination is whether the suits were barred by the

(1) (1917) I. L. R. 44 Calc. 841, 857 ; L. R. 44 I. A. 117, 125.

Indian Limitation Act, 1877. This statute, as is well known, fixed different periods of limitation within which suits of different characters should be brought. The appellant contends that Article 113 of the 2nd Schedule of that statute regulates the rights of the parties in the present case, while the respondent asserts that the period is fixed by Article 144 of the same Schedule. By the terms of the Schedule, Article 113 is stated to apply to a suit for specific performance of a contract, the period of limitation is fixed at three years and the time from which the period begins to run is stated to be the date fixed for the performance, or if no such date is fixed, the date when the plaintiff has notice that performance is refused. Article 144, on the other hand, relates to a suit for possession of immovable property or any interest therein not thereby otherwise specially provided for, the period is twelve years, and the time from which the period begins to run is when the possession of the defendant becomes adverse to the plaintiff. If Article 113 applies, the appellant is entitled to succeed. But it is admitted that he must fail if Article 144 prescribes the true period.

The circumstances out of which the action arose can be briefly stated. The respondent is the *patnidar* of half and *darpatnidar* of the other half of the village of Gopalpur, and is *patnidar* of six other villages, all of the said villages being within the zemindari of the appellant. Some of the lands in these villages included in the *patnis* and the *darpatnis* were originally held as *chaukidari chakaran* lands, but in June 1898 these lands were all resumed by the Collector under the Bengal Act VI of 1870, and then transferred to the appellant. It is unnecessary to state the history of these lands, the circumstances attaching to their tenure and the respective rights of

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the parties when they were resumed by the Collector, for all these matters have been fully dealt with in a judgment of this Board in the case of *Raja Ranjit Singh v. Kali Dasi Debi*(1). It was there decided that upon such resumption and transfer to the zemindar as is provided by the Bengal Act VI of 1870, the *patnidar* or the *darpatnidar* is entitled under section 51 to possession of the *chaukidari chakaran* lands. That right depended upon the interpretation given by the Board to section 51 of Act VI of 1870. This section operates to transfer the land to the zemindar.

“Subject to all contracts theretofore made in respect of, under, or by virtue of which any person other than the zemindar may have any right to any land, or portion of his estate or tenure in the place in which such land may be situate.”

Lord Parker in delivering the judgment of the Board, while commenting upon the fact that these words were not happily chosen, expressed the opinion that their obvious intention was to preserve the rights of third parties. He said:—

“They contemplate a case in which the village in which the resumed lands are situate has been made the subject of a contract by the zemindar or those through whom he claims, and that under this contract some third party may have interest in the lands resumed. They are wide enough to include, and in their Lordships' opinion do include, the rights of a *patnidar* under a *patni* grant by virtue of which the *patindar* is lessee of the zemindar's interests in the lands resumed, and also the rights of a *darpatnidar* under a *darpatni* grant.”

There is, therefore, no longer any question as to the right of the respondent to the lands, but the appellant's contention is that as the rights of the *patnidar* are reserved under the words referred to they must be assumed to be contractual rights, that consequently a suit to enforce those rights must be a suit for specific performance, and that the date from which the statute begins to run must be the date

(1) (1917) I. L. R. 44 Calc. 841 ; L. R. 44 I. A. 117.

of the grants to the zemindar. Their Lordships are unable to accede to this contention. It does not follow that because the rights originally arose by virtue of a grant declared to be a contract within the meaning of section 51 they are therefore rights, contractual in the sense that the contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the *patni* grants were made the resumption of the *chaukidari chakaran* lands was not even contemplated, and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession. Upon resumption of such possession the rights of the *patnidar* were those conferred on him by the estate and interest created by the *patni* leases, and it was these rights that were kept alive by section 51 of Act VI of 1870 of the Bengal Council. It is only necessary to examine the words which prescribe the date from which the period begins to run in Article 113 of the second Schedule of the Limitation Act to show the difficulties in the way of any contrary contention. This date, as has already been pointed out, is either the date fixed for performance or the date when the plaintiff has notice that performance has been refused, but no date whatever has been fixed for performance in such a case as the present, either by the original grant or by the terms of the statute, nor has there been any refusal to perform a contract, for there was no unexecuted contract which had to be performed. A suit for specific performance is essentially a suit for enforcing a stipulated obligation relating to property. The word "contract" itself primarily means a transaction which creates personal obligations, but it may, though less exactly, refer to transactions which create

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real rights. It is in this latter sense that the word was used in section 51, and the rights thereby reserved to the *patnidars*, comprehensively included in the word "contracts," are real rights, the enforcement of which is secured not by a suit for specific performance, but by a suit for possession, and it is this which, in their Lordships' opinion, is the character of the suits in the present case.

From this it follows the period of limitation is that fixed by Article 144 ; consequently the judgment appealed from is in their Lordships' opinion correct, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors for the appellant: *Downer & Johnson.*

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

J. V. W.