

**FULL BENCH.**

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*Before Sanderson C. J., Chatterjea, Rankin, Suhrawardy and  
Panton JJ.*

SECRETARY OF STATE FOR INDIA

1926

May 18.

v.

RADHA KANTA AICH.\*

*Limitation—Suit to contest order of Board of Revenue—Act IX of 1847,  
s. 6—Regulation II of 1819, s. 24.*

A suit to contest an order of the Board of Revenue under s. 6 of Act IX of 1847 declaring the liability of the lands claimed as part of a permanently settled estate to an assessment of revenue, is not barred by the one year's rule of limitation laid down in s. 24 of Regulation II of 1819.

*Prafulla Nath Tagore v. The Secretary of State for India* (1) overruled.

REFERENCE to a Full Bench in Appeal from Original Decree preferred by Rai Radha Kanta Aich Bahadur, plaintiff.

The facts of the case out of which this matter arises appear in the following referring judgment of Chatterjea and Panton JJ. :—

"This appeal arises out of a suit for establishment of the plaintiff's title to the disputed lands and for a declaration that they appertain to the plaintiff's permanently settled estate Jugidia bearing touzi No. 11 of the Noakhali Collectorate, as being re-formation *in situ* of the lauds of certain mauzas belonging to the plaintiffs, and for other reliefs.

"The defence, apart from that on the merits, *inter alia*, was that the suit was barred by limitation under section 24 of the Bengal Regulation II of 1819. The Court below decided the question on the merits,

\* Full Bench Reference No. 1 of 1926, in Appeal from Original Decree No. 13 of 1925, against the decree of Mahendra Nath Mukhuty, Additional Subordinate Judge of Noakhali, dated Sep. 26, 1924.

“partly in favour of the plaintiffs With regard to the question of limitation, that Court, relying upon the decision in the case of *Peary Lal Ray Chowdhuri v. Secretary of State for India in Council* (1) held that the suit was not barred.

“The defendant, the Secretary of State for India in Council, has appealed to this Court. One of the questions for decision in the appeal is whether the suit is barred under the special limitation provided for in section 24 of Regulation II of 1819. On that question the case of *Prafulla Nath Tagore v. The Secretary of State for India in Council* (2) is in favour of the appellant, while the case of *Peary Lal Ray Chowdhuri v. The Secretary of State for India in Council* (1) is against him. There is a clear conflict between the two decisions. In the latter case the learned Judges did not refer the point to the Full Bench although they dissented from the earlier decision. But as stated above there is a clear conflict between the two decisions, and having regard to the importance of the question we think that it should be referred to a Full Bench. We accordingly refer the following question to the Full Bench viz. whether a suit to contest an order of the Board of Revenue under section 6 of Act IX of 1847, declaring the liability of the lands, claimed as part of a permanently settled estate, to assessment of revenue, is barred by the one year's rule of limitation laid down in section 24 of Regulation II of 1819. As the question arises in a first appeal, only the question of law is referred to the Full Bench, and the appeal will be heard on the merits (if necessary) after the decision of the Full Bench on the question of law.”

*The Senior Government Pleader (Babu Dwarka Nath Chakravarti) and the Assistant Government Pleader (Babu Surendra Nath Guha), for the appellant. One of the points raised was as to limitation, and this has been referred to the Full Bench. Reads referring order by Chatterjea and Panton JJ. The decisions in Prafulla Nath Tagore's case (2) and Peary Lal Ray Chowdhuri's case (1) are clearly in conflict.*

As far as I am personally concerned I had the honour of appearing in both those cases referred.

[SANDERSON C. J. Do you agree with the decision in *Peary Lal Ray Chowdhuri's* case (1) ?]

(1) (1923) 39 C. L. J. 454.

(2) (1920) 24 C. W. N. 813.

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Yes. But I can't say seriously that the second judgment referred is sound.

In my humble opinion the Crown ought not to rely on limitation unless it is so clear that it cannot be got round. Refers to section 24 of Regulation II of 1819.

[SUHRAWARDY J. What is the meaning of the word "final" ?]

[SANDERSON C. J. That does not mean that the liability to assessment cannot be disputed in a separate suit.]

After the decision in *Peary Lal Ray Chowdhuri's* case (1) the Government of Bengal have been uniformly acting on it.

*Babu Surendra Lal Mukherjee* and *Babu Nagen-  
dra Nath Bose*, for the respondent, was not called upon to reply.

SANDERSON C. J. In this matter two of my learned brothers referred the following question to the Full Bench, namely, "whether a suit to contest an order of the Board of Revenue under section 6 of Act IX of 1847 declaring the liability of the lands claimed as part of a permanently settled estate to assessment of revenue is barred by the one year's rule of limitation laid down in section 24 of Regulation II of 1819."

The learned Senior Government Pleader, who appeared for the Secretary of State for India in Council, stated that he did not feel himself able to contest the correctness of the decision, which was given by a Division Bench of this Court, in *Peary Lal Ray Chowdhuri v. Secretary of State for India in Council* (1).

The result, therefore, is that the answer to the question, which has been referred to this Court, must

be that the suit is not barred by the one year's rule of limitation laid down in section 24 of Regulation II of 1819.

CHATTERJEA J I agree.

RANKIN J I agree.

SUHWARWARDY J I agree.

PANTON J. I agree.

G. S.

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*Before Sanderson C. J., Chatterjeu, Rankin, Suhrawardy and Panton JJ.*

HARIDAS MAJUMDAR

*v.*

GOLAM MAHIUDDIN FARQUL\*

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*Reference to Full Bench—Full Bench reference in second appeal—Disposal power of—Practice—Reference abortive—Remand to Division Bench.*

When the reference is in a Second Appeal and the question, which has been referred to the Full Bench, is decided by the Full Bench, then the Full Bench disposes of the Second Appeal. But it appears to be the practice that when the Full Bench considers that the point, which has been referred, does not arise, the matter is referred to the Division Bench for disposal.

REFERENCE to Full Bench made in Second Appeals preferred by Haridas Mazumdar and others, defendants.

\* Full Bench Reference No. 3 of 1925. in Appeals from Appellate Decrees Nos. 1174, 1180, etc., of 1923, against the decrees of J. Bartley, Special Judge of Tippera, dated Aug. 17, 1922. affirming the decrees of Mahomed Ali Azam, Assistant Settlement Officer of Tippera, dated Sep 25 1920.