

## APPELLATE CIVIL.

Before Suhrawardy and Jack JJ.

ASUTOSH BHUIYAN

v.

RADHIKA LAL GOSWAMI.\*

1928

June 11.

*Limitation—Bengal Tenancy Act (VIII of 1885), suit under s. 111 B—  
Right to sue, when accrues—Indian Limitation Act (IX of 1908),  
Sch. I, Art. 120.*

The right to sue under section 111B of the Bengal Tenancy Act accrues on the date of publication of the record-of-rights, as by reason of the presumption of its correctness a cloud is cast upon the title of the plaintiff by such publication; and, by virtue of clause (4), the period of limitation is subsequently suspended for three months after the certificate is made.

*Rajani Nath Pramanik v. Monaram Mondal (1) and Maharaja Bahadur Sir Prodyat Kumar Tagore v. Balgobinda Ditchit (2) referred to.*

A suit under section 111B of the Bengal Tenancy Act is governed by Article 120 of Schedule I of the Indian Limitation Act.

SECOND APPEAL by the plaintiffs, Ashutosh Bhuiyan and others.

The plaintiffs instituted a suit for a declaration of their *nishkar* right to certain lands, which were recorded as *mal* lands in the record-of-rights and for a further declaration that the record-of-rights was wrong. The suit was filed on the 8th May, 1924. The final publication of the record-of-rights had taken place on the 31st January, 1918, and the certificate of publication was signed on the 6th June, 1918. The defence was that the suit was barred by limitation and that the record-of-rights was correct.

The Subordinate Judge, who tried the suit, held that the suit was time-barred and dismissed it with costs. The plaintiffs preferred an appeal and the

\* Appeal from Appellate Decree, No. 2383 of 1925, against the decree of A. L. Mukherji, Additional District Judge of Midnapur, dated Aug. 10, 1925, affirming the decree of Nani Gopal Mukerji, Subordinate Judge of Midnapur, dated Nov. 20, 1924.

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Additional District Judge upheld the findings of the Subordinate Judge.

The plaintiffs thereupon appealed to the High Court.

*Mr. Heramba Chandra Guha* (with him *Babu Jnan Chandra Ray*), for the appellants.

*Mr. Gunada Charan Sen* (with him *Babu Mani Lal Bhattacharya*), for the respondent.

SUHRWARDY J. The appellants brought a suit for declaration of their *nishkar* right to the lands in suit on a declaration that the entry in the record-of-rights to the contrary was wrong. Both the courts below have held that the suit was barred under Article 120, Limitation Act. The record of rights was finally published on the 31st January, 1918, and the certificate was signed on the 6th June, 1918. The present suit was brought on the 8th May, 1924. It is not disputed that the present suit is one contemplated by section 111 B, Bengal Tenancy Act. The courts below have held that the cause of action arose on the 1st February, 1918, and even making allowance for three months as provided in section 111 B, the suit is barred under Article 120, Limitation Act. The appellants contend that the date of the signing of the certificate should be reckoned as the date on which their right to sue accrued and therefore their suit is within time. The various sections bearing on this point are not happily worded so as to put the matter beyond all reasonable doubt; but there are decisions of this Court as well as of the Patna High Court which seem to have finally settled this matter. According to the law thus interpreted the cause of action arises on the final publication of the record-of-rights. The reason is this. An entry in a finally published record does not create any title in favour of any person. It only raises a presumption that it is correct unless the contrary is proved. As it is only a piece of evidence, it is not necessary for the party against whom it is made to institute a suit to correct it. He may bring a suit for the purpose and

if he does so, he is bound by the ordinary law. *Ramgulam Singh v. Bishnu Pargash Narain Singh* (1). Under section 103 A (2), after disposing of the objections referred to in that and previous sections, the Revenue Officer shall finally frame the record and shall cause it to be finally published in the prescribed manner. Under section 103 B (3), every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct unless it is proved by evidence to be incorrect. The certificate signed by the Revenue Officer stating that the record-of-rights has been finally published shall be conclusive evidence of such publication under section 103 B. A cause of action for a declaratory suit arises when a cloud is cast upon the title of the plaintiff. As under section 103 B (3), the presumption of correctness at once attaches to an entry on the publication of the record, the right to sue to get rid of the presumption or to remove the cloud from the plaintiffs' title accrues on the date of publication. Now section 111 B says that no suit relating to certain matters mentioned therein shall be instituted within three months from the date of the certificate of final publication. If the final publication and the making of the certificate are not simultaneous the result must be that the cause of action arises immediately on the publication of the record-of-rights and the period of limitation is subsequently suspended for 3 months after the certificate is made. The position does not appear to be happy, but this is the only conclusion that can be drawn from the various sections of the Act and the interpretation put upon them by judicial decisions. A suit for alteration of rent or the determination of the status of any tenant cannot be brought under section 111 until three months after the publication of the record-of-rights. This provision indicates that every other suit can be brought as soon as the record-of-rights is published. This seems to be the plain intendment of the law as contained in the several sections as understood by Courts.

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SUHRAWARDY J.

In *Rajani Nath Pramanik v. Monaram Mandal* (1) it is observed that a certificate signed by the Revenue Officer is conclusive evidence of its publication; but the presumption as to the correctness of the entry arises from the publication which is provided by section 103 A. The same view was taken in *Maharaja Bahadur Sir Prodyat Kumar Tagore v. Balgobinda Ditchit* (2). Though that was a case under section 111, the law, so far as it related to the point of limitation, was similarly laid down. The result of these considerations is that in the present case the plaintiffs' right to sue for the declaration that they had *nishkar* right in the land in suit arose immediately on the final publication of the record-of-rights, namely, on the 31st January, 1918. But as the right to bring a suit for this purpose was suspended for three months from the 6th June, 1918, the date when the certificate was signed, they are entitled to an extension of the period of limitation provided by section 120, Limitation Act, by three months under clause (4) of section 111 B. The last day, therefore, on which the suit should have been filed was the 30th April or 1st May, 1924. The suit, having been filed on the 8th May, 1924, is barred by limitation. This appeal, accordingly, fails and is dismissed with costs.

JACK J. I agree with the conclusion arrived at by my learned brother in this case, but would like to add a few remarks. It is true that in a suit for a declaration that an entry in the record-of-rights is wrong the cause of action starts from the date of publication of the record-of-rights, since the presumption of the correctness of the entry then arises and it is that presumption that clouds the plaintiffs' title, but this is a suit under section 111 B of the Bengal Tenancy Act which lays down that no such suit shall be instituted within 3 months of the date of final publication. Under section 120 of the Limitation Act, the period of limitation starts from the date when the right to sue accrues. The right to sue accrues from the date of

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final publication since there is no prohibition in the Bengal Tenancy Act against the institution of the suit immediately after final publication of the record-of-rights; at the same time I think it can hardly have been the intention of the legislature to allow the institution of a suit between the date of final publication and the date of signing the certificate and this is where the difficulty lies.

The case of *Prodyat Kumar Tagore v. Balgobinda Ditchit* (1) was one under section 111 of the Bengal Tenancy Act and in that section the period during which no suit is to be brought starts from the final publication and not as in section 111 B from the certificate of publication. The case of *Rajani Nath Pramanik v. Monaram Mandal* (2) was an Eastern Bengal case, in which it was held that section 111 B could not be applied to extend the period of limitation, because in that case 3 months from the date of the certificate of final publication had expired before the East Bengal and Assam Amending Act came into force.

A. A.

*Appeal dismissed.*

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