APPELLATE CIVIL.

Before M. C. Ghose and R. C. Mitter JJ.

1937

July 13, 16.

HRISHI KESH MITRA

v.

BARADA PRASAD RAY CHAUDHURI.*

Landlord and Tenant—Co-sharer landlord—Suit for rent by some, if bars further prosecution of certificate-proceedings previously instituted by other co-sharers—Time taken by certificate-proceedings, if excluded in computing period of limitation—Bengal Tenancy Act (VIII of 1885), s. 148A, sub-s. (9)—Indian Limitation Act (IX of 1908), s. 14.

A suit for rent by a co-sharer landlord to recover rent due in respect of his share, to which the other co-sharer landlords are made parties under the provisions of s. 148A of the Bengal Tenancy Act, does not bar under sub-s. (9) of the said section the further prosecution of certificate-proceedings previously instituted by the other co-sharers in respect of their share. And if the latter choose to withdraw from the certificate-proceedings and join in the suit as co-plaintiffs under sub-s. (3), they are not entitled to claim, under s. 14 of the Limitation Act, the exclusion of time of the proceeding before the Certificate-Officer.

Sati Prasad Garga v. *Gobinda Chandra Shee* (1) distinguished.

APPEAL FROM ORIGINAL DECREE by the defendant.

The facts of the case and the arguments in the appeal are fully set out in the judgment.

Radha Binode Pal and *Shreesh Chandra Datta* for the appellant.

Sarat Chandra Basak, Senior Government Pleader, and *Rama Prasad Mookerjee*, Assistant Government Pleader, for the respondents.

Panna Lal Chatterji for the Deputy Registrar.

Cur. adv. vult.

*Appeal from Original Decree, No. 227 of 1936, against the decree of Biman Bihari Sarkar, Subordinate Judge of Khulna, dated July 30, 1936.

(1) (1928) I. L. R. 56 Cal. 805.

1937.

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

M. C. GHOSE J. This is an appeal by one of the defendants in a suit for rent. The 3 annas odd co-sharer landlords instituted a suit on April 16, 1935, claiming rent from *Asârh* 1338 to end of 1341 B.S. The suit was instituted under s. 148A of the Bengal Tenancy Act and according to that section a notice was sent to the respondents who are 12 annas odd co-sharer landlords. But before that suit, the respondents 12 annas odd co-sharer landlords, whose estate was under the Court of Wards, had through their manager requisitioned to the Certificate-Officer for a certificate on April 18, 1933, claiming rent for 1336 to 1339 B.S. The Deputy Collector filed the certificate on May 29, 1933, and duly issued notice under s. 7, but though the certificate-proceedings went on for two years the finding of the learned Subordinate Judge is that the notice under s. 7 does not appear to have been served. When the respondents got notice of the suit filed by their co-sharers they applied to the Deputy Collector for permission to withdraw the certificate and the Deputy Collector allowed them to withdraw the certificate. Then they came under s. 148A and joined as co-plaintiffs with the 3 annas co-sharers and claimed rent for the years 1336 to 1341 B.S. Various defences were taken by the tenants. They were rejected and the learned Subordinate Judge has decreed the suit.

In appeal, the learned advocate, Dr. Pal, has urged only one point, namely, that the rent and cesses for the years 1336-1337 B.S. are barred by limitation and ought not to be allowed to the plaintiffs respondents. The learned Subordinate Judge has thought that, as the respondents proceeded with diligence in the certificate-case in the Deputy Collector's Court, the period during which they prosecuted that proceeding should be excluded under s. 14 of the Limitation Act.

Upon hearing the learned advocates on both sides, it is clear that s. 14 of the Limitation Act has no application to the facts of this case. That section

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

M. C. Ghose J.

only applies when the Court, where the proceeding is prosecuted, is, from defect of jurisdiction or other cause of a like nature, unable to entertain it. Now, in this case, when the proceeding, namely, the certificate, was instituted in April 1933, the Certificate-Officer had full jurisdiction to entertain the certificate. Having lawfully entertained the certificate, he could not lose his jurisdiction merely because the co-sharer landlords instituted the suit two years later. The proceeding lawfully instituted does not become defective even if the law upon which it is based is altered after the institution of the suit unless the law specially has given retrospective effect. Now, in this case, the plaintiff-respondents were fully entitled to carry on with the certificate of 1933 in spite of the suit by their co-sharers in 1935. The withdrawal by them of the certificate was an entirely voluntary action on their part and by such action they have lost the rents and cesses of 1336-1337 under the law of limitation.

Dr. Basak, the learned advocate for the respondents, did not seriously defend the decree of the learned Subordinate Judge in this respect. He prayed that the plaintiff-respondents may be permitted to revive the certificate of 1933 in the Court of the Certificate-Officer so as to claim the rents and cesses for two years 1336-1337. As to this prayer we have nothing to say. The party may apply to the Certificate-Officer when the matter will be dealt with by him.

R. C. MITTER J. The question in controversy in this appeal, though of first impression, is a short one. It is this: whether the claim for rent and cesses due to the share of the added plaintiffs for the years 1336 and 1337 is barred by limitation.

Touzi No. 216 of the Khulna Collectorate belongs to two sets of proprietors, Mrityunjay Ray Chaudhuri and others and Barada Prasad Ray Chaudhuri and others, the former set of proprietors

having 3 as. 4 pies share in the same and the latter set the remaining 12 as. 8 pies. For the purpose of convenience, I will hereafter call the first set of proprietors as 3 annas *hisya* and the second set 13 annas *hisya*. Both the *hisyas* were under the management of the Court of Wards at all material times and are still under its management. Under both *hisyas* is a *gânti* tenure named Bakshi Muhammad Miya held by the principal defendants at an annual rent of Rs. 1,339-2-2, of which Rs. 256-5-1 is payable to the 3 annas *hisya* and Rs. 1,082-13-1 to the 13 annas *hisya*, and there is separate collection.

The 13 annas *hisya*, represented by the Manager of the Court of Wards made on April 18, 1933, a requisition under s. 5 of the Bengal Public Demands Recovery Act (III of 1913) to the Certificate-Officer for a certificate for the arrears of rent and cesses of the said *gânti* tenure due in their share for the years 1336 to 1339 B.S. The Certificate-Officer, on being satisfied that the demand was recoverable, signed a certificate for the amount claimed and filed it in his office on May 29, 1933, in accordance with the provision of s. 6 of the said Act, and directed under s. 7 notice to issue on the certificate-debtors. It appears that there was delay in serving the said notice on the certificate-debtors. While the certificate-proceedings were pending, the 3 annas *hisya*, represented by the Manager of the Court of Wards, filed on April 16, 1935, a suit in the second Court of the Munsif at Bagerhat (Rent Suit No. 1592 of 1935) for recovery of their share of rent and cesses for the said *gânti* tenure from the *Asârh kist* of 1338 to the *Chait kist* 1341. The said suit was framed under s. 148A of the Bengal Tenancy Act, that is, with the 13 annas *hisya* represented by the Manager of the Court of Wards as *pro forma* defendants and with a prayer that if they wished to become co-plaintiffs for recovery of their share of the rent and cesses, if due to them, they may be allowed to do so and to include their claim in the plaint on payment of

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

R. C. Mitter J.

additional Court-fees. The claim in the suit was for the rent and cesses due to the share of the 3 annas *hisya* for the said years and for damages and was laid at Rs. 1,708-1. It was, accordingly, instituted in the Court of the Munsif, whose pecuniary jurisdiction was limited to Rs. 2,000. At the date when this suit was filed the claim for arrears of rent and cesses up to the year 1337 would be barred by limitation.

On the special summons as provided for in s. 148A, sub-s. (*2*), of the Bengal Tenancy Act having been served on the Manager of the Court of Wards of the 13 annas *hisya* the said manager, as representing the 13 annas *hisya*, made an application on August 29, 1935, to the Munsif for being made co-plaintiff. The claim of the 13 annas *hisya* was stated in the said application to be Rs. 9,994-2-10, being the arrears of rent and cesses due in their share for the years 1336 to 1341 together with interest. At the date of this application, the proceedings under the Public Demands Recovery Act for the recovery of their share of rent and cesses for the years 1336 to 1339 started by them on April 18, 1933, were still pending.

The Munsif, by his order, dated September 6, 1935, granted the said application with the result that the 13 annas *hisya* became co-plaintiffs with their claim for Rs. 9,994-2-10 for the arrears for the said years (1336 to 1341), and the value of the subject-matter thus raised having exceeded the pecuniary jurisdiction of the Munsif, he returned the plaint for being presented to the proper Court. It was, accordingly, presented to the Court of the Subordinate Judge of Khulna on September 14, 1935, and was registered as Rent Suit No. 40 of 1935 of that Court. After this, the 13 annas *hisya* withdrew the certificate-proceedings.

Of the tenant defendants, only one, namely, defendant No. 11, appeared and contested the suit.

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

R. C. Mitter J.

Three points were urged by him before the Subordinate Judge, one of them being that the claim of the added plaintiffs—the 13 annas *hisya* for the years 1336 and 1337 was barred by time. The Subordinate Judge, by his judgment, dated July 30, 1936, overruled the said objection and also another objection, which it is not necessary for me to state, and accepted the third which related to the amount of cesses recoverable. The plaintiffs and the added plaintiffs have not preferred any memorandum of appeal or cross objections, but defendant No. 11 has preferred this appeal and the scope of the appeal is limited in the memorandum of appeal to the claim of the 13 annas *hisya* for the rent and cesses for the years 1336 and 1337. His learned advocate, Dr. Pal, has urged only one point in support of the appeal, namely, that the said claim is barred by time. This point was also urged before the learned Subordinate Judge, and as I have already stated was overruled by him. The claim for the years 1336 and 1337 B.S. was *prima facie* barred by time at the date when the plaint was presented in the second Court of the Munsif at Bagerhat, but the learned Subordinate Judge held that s. 14 of the Limitation Act has saved the said claim from the effect of time. The reasons given by him are (*i*) that the institution of the suit for rent and cesses by the 3 annas *hisya* in the second Court of the Munsif at Bagerhat (Rent Suit No. 1592 of 1935) prevented the 13 annas *hisya* from proceeding further with the certificate-proceedings, and so this was a cause akin to defect of jurisdiction and (*ii*) that the certificate-proceedings had been prosecuted with due diligence. This last mentioned finding of fact has not been challenged before us by Dr. Pal. The only point, therefore, for us to consider is whether the first reason given by the learned Subordinate Judge is a sound one. The Subordinate Judge relied upon sub-s. (*9*) of s. 148A of the Bengal Tenancy Act which is as follows :—

When a suit has been instituted under the provisions of sub-s. (*1*), no co-sharer landlord, who has been made a party defendant thereto, and duly served with summons issued under sub-s. (*2*), shall be entitled to recover,

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

R. C. Mitter J.

save as co-plaintiff in that suit, any rent in respect of the tenure or holding for the period in suit or *for any period previous* thereto.

The question narrows down to this, namely, whether this sub-section bars recovery by suit only or bars recovery by certificate-proceedings also.

It may be taken as established that s. 14 of the Limitation Act, being a rule for the computation of the period of limitation, applies to suits for recovery of arrears of rent of agricultural land, although the *period* of limitation for such suits is prescribed in the Bengal Tenancy Act [*Sati Prasad Garga* v. *Gobinda Chandra Shee* (1)]. But the question before us is whether the facts of the case, which we have before us, attract the operation of that section. The proceedings started by the 13 annas *hisya* on April 18, 1933, under the Public Demands Recovery Act were in order at that time and the Certificate-Officer had jurisdiction to sign and file in his office the certificate, as he did, on May 29, 1933. This signing and filing of a certificate by the Certificate-Officer corresponds in effect to the passing of a decree of a civil Court. After this event, the Public Demands Recovery Act provides for the machinery for setting aside or modifying at the instance of the certificate-debtor the certificate so filed. There are two modes indicated in the Act itself, one being by means of a petition presented within a certain time before the Certificate-Officer who had signed and filed the same or before the Certificate-Officer who was executing the same. This is the mode indicated in ss. 9 and 10 of the Act. The other mode for cancellation or modification of a certificate so signed and filed is by means of a suit in the civil Court filed in accordance with, and subject to the limitations defined, in Part IV of the Act. But so long as the certificate signed and filed in the office of the Certificate-Officer is not cancelled or modified, it has, speaking by way of analogy, the force and effect of a decree and can

(1) (1928) I. L. R. 56 Cal. 805.

be executed in accordance with the provisions contained in Part III of the Act, which is a complete Code in itself. As long as the certificate stands, the right of the certificate-holder to enforce it by execution in accordance with the provisions of the Public Demands Recovery Act cannot be interrupted or suspended unless by an injunction from a competent Court, or by a stay order from a competent authority. These are, in my judgment, the general principles and it is for us to see if these principles are in any way affected, curtailed or controlled by the provisions of the Bengal Tenancy Act. The only provision in the last mentioned Act, which is said to have this effect, is sub-s. (*9*) of s. 148A. That sub-section only was referred to by the learned Subordinate Judge and also by Dr. Basak, the learned Senior Government Pleader, who appears for the respondent. In my judgment s. 148A, sub-s. (*9*) has not the effect contended for by Dr. Basak.

Section 148A occurs in Chap. XIII of the Act. The chapter is headed "Judicial Procedure" and deals with suits filed in civil Courts, and applications to such Courts only. Chapter XIIIA is headed "Summary Procedure for Recovery of Rent under the Public Demands Recovery Act". It lays down that in certain cases a landlord can be invested with the power to recover rent under the procedure of the Public Demands Recovery Act and defines the procedure for the exercise of these powers. Sub-s. (*9*) of s. 148A no doubt does not in express terms bar the recovery by *suit* only of the co-sharer landlord's dues, when he had not joined as co-plaintiff in his co-sharer's suit for rent, but that provision, occurring, as it does, in the chapter of the Bengal Tenancy Act, which deals with suits and proceedings in civil Courts, must by necessary implication be confined to recovery by *suits* only. The words "no co-sharer landlord..... "shall be entitled to recover" used in that sub-section, must on proper construction, run as follows "no co- "sharer landlord.....shall be entitled to recover by "proceedings taken in civil Court, *i.e.*, by suit".

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

R. C. Mitter J.

Any other construction would not only lead to manifestly unreasonable results but also to direct and irreconcilable conflict between the said sub-section and other provisions of the Bengal Tenancy Act itself.

It is quite clear from the provisions of s. 148A that a *later suit* instituted by a co-sharer landlord for recovery of rent for the same or for a previous period is barred by an *earlier suit* instituted by his co-sharer and not *vice versa*. But if a plain meaning be given to the words of sub-s. (*9*) of s. 148A, as it stands, *i.e.*, if the words "shall be entitled to recover" be not controlled in the manner I have indicated above, an earlier proceeding for recovery of arrears of rent started by a co-sharer landlord under the Public Demands Recovery Act would be barred by a *later suit* started by his co-sharer for recovery of rent due to his share for the same or it may be for a subsequent period—(the type of a case we have before us)—which would be manifestly unreasonable and unjust.

As I have already stated above, the construction contended for by Dr. Basak would also lead to a conflict between that sub-section and other provisions of the Bengal Tenancy Act. To make my point clear I will take the case where there are two landlords, A and B, of whom A only has been given the power to recover rent under the provisions of the Public Demands Recovery Act under the provisions of sub-s. (*1*) of s. 158A. B's share of the rent for the year 1930 had been paid by the tenant amicably within that year but A was left unpaid. In the year 1931 A takes proceedings under the Public Demands Recovery Act for recovery of his share of the rent due for the year 1930. On his requisition the certificate is signed by the Certificate-Officer and filed in his office, say, towards the last part of the year 1931. In the year 1932, B files a suit in the civil Court for recovery of his share of rent for the preceding year,

namely, for 1931, and he frames his suit under s. 148A. On the reasons given by the Subordinate Judge for applying s. 14 of the Limitation Act, the certificate-proceedings, started by A in 1931, would automatically stop and A would not be able to proceed further with those proceedings as soon as the special summons issued in B's suit of 1932 under sub-s. (*2*) of s. 148A is served on him. But s. 158A, sub-s. (*8*), compels him, A, however, to proceed under the provisions of the Public Demands Recovery Act, for a co-sharer landlord by becoming a co-plaintiff under the provisions of s. 148A, in substance, institutes a suit in the civil Court for recovery of his dues. This leads to a clear conflict and the conflict can only be avoided if sub-s. (*9*) of s. 148A be limited to suits.

The intention of the legislature is further made clear by the saving in cl. (*b*) of s. 195 of the Bengal Tenancy Act, which runs as follows:—

> Nothing in this Act shall affect—
>
> (*b*) any enactment regulating the procedure for the realisations of rents in estates belonging to the Government, or under the management of the Court of Wards or of revenue authorities.

Rent due to these persons are public demands according to the provisions of Sch. I of the Public Demands Recovery Act and are to be recovered under the said Act. I hold, for the reasons given above, that sub-s. (*9*) of s. 148A of the Bengal Tenancy Act could not in law have interrupted the normal course of the certificate-proceedings started by the 13 annas *hisya* and, accordingly, s. 14 of the Limitation Act cannot be invoked by them in the case we have before us to extend the period of limitation for their claim for the years 1336 and 1337.

I would accordingly allow the appeal and set aside the decree against the tenant defendants so far as it relates to the arrears of rent and cesses for the years 1336 and 1337. This judgment of mine will not be taken to affect the right of the added plaintiffs

1937

Hrishi Kesh Mitra v. *Barada Prasad Ray Chaudhuri.*

R. C. Mitter J.

to reopen the certificate-proceedings in respect of their claim for arrears for 1336 and 1337, should they be advised to do so. With the merits of such an application for renewal, if made, I do not express any opinion.

As the appeal succeeds, the appellant will have against the added plaintiffs costs of the lower Court in proportion. The parties to bear costs of this Court.

Appeal allowed.

A. A.