

*Before Mr. Justice Mitter and Mr. Justice Maulean.*

LUCHMON SAHAI CHOWDHRY AND ANOTHER (PLAINTIFFS) v. <sup>1884</sup>  
KANCHUN OJHAIN AND OTHERS (DEFENDANTS)\* January 4,

*Limitation—Suit for declaration of title—Suit to set aside an order of revenue authorities—Land Registration Act (Act VII of 1876), s. 89—Limitation Act (Act XV of 1877), Sch. II, Art. 14.*

The Civil Court has no power to set aside an order passed under the Land Registration Act, and when a prayer for such relief is contained in a plaint which also asks for a declaration of right and title to, and confirmation of possession in property, such prayer may be treated as mere surplusage.

When, therefore, a plaint was filed containing separate prayers for the above relief, and when the original Court held that the main object of the suit was to have certain orders made by the revenue authorities set aside, and that the suit was accordingly governed by Art. 14, Sch. II of the Limitation Act, and passed a decree dismissing the suit as having been brought more than a year after the date of such orders,

*Held*, that such a decree was wrong; that the suit being one simply for the declaration of the plaintiffs' title in respect of the property in dispute, Art. 14 had no application to the case.

In this case the plaintiffs sought to be confirmed in the possession of, and to have an adjudication of, their right and title to a share in certain mouzahs in the district of Durbungah. They alleged that they had purchased the share in question, and that upon their submitting a petition for the registration of their names in respect thereof, the defendants filed a petition of objection denying the purchase, and that the plaintiffs were in possession of the disputed share as they alleged.

This petition of the plaintiffs was disallowed on the 21st June 1879, and that order was upheld by the Collector on the 28th August 1879, on an appeal being preferred to him. The plaintiffs then carried their appeal to the Commissioner, but that officer, on the 2nd July 1880, dismissed it on the ground that no appeal lay to him from an order passed by the Collector, merely affirming the order of the Deputy Collector.

The plaintiffs accordingly, on the 1st July 1881, filed this suit, praying—

\* Appeal from Original Decree No. 137 of 1882, against the decree of Baboo Koilas Chunder Mukerji, Rai Bahadur, First Subordinate Judge of Mozufferpore, dated 6th March 1882.

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(1.) That the Court would be pleased to confirm, by adjudication of their right, title, and possession, their possession in the disputed mouzahs.

(2.) That the Court should adjudge that the defendants had no right or title to the possession of the share in the mouzahs in respect of which their names had been registered, and which were claimed by the plaintiffs.

(3.) That the Court should set aside the orders made in the Revenue Department, dated the 21st June 1879, the 28th August 1879, and the 2nd July 1880, and grant the plaintiffs a decree for the registration of their names in the Collectorate in respect of the shares claimed.

In the lower Court the only issue determined was that of limitation. That Court held that, as the main object of the suit was to set aside the Collector's and Revenue Commissioner's orders refusing to register the plaintiffs' names in respect of the disputed share under the Land Registration Act (Beng. Act VII of 1876), and as the prayer for the declaration of right was merely a subsidiary prayer, the suit was governed by Art. 14, Sch. II of the Limitation Act, which allowed only one year from the date of the order. It further held that the time during which the appeal was pending before the Commissioner could not be deducted, inasmuch as no appeal lay to that officer at all under s. 85 of the Land Registration Act, and that the period should therefore be calculated from the 28th August 1879, and that the suit was therefore barred. The Court also refused to apply Art. 144 of Sch. II of the Limitation Act to the suit on the ground that that Act only applies to cases in which possession is asked for.

The Court accordingly dismissed the suit with costs.

Against that decree the plaintiffs now appealed to the High Court.

Munshi *Muhomed Yusuf* for the appellants.

Baboo *Unnoda Pershad Banerjee*, Baboo *Chunder Madhub Ghose* and Baboo *Raghunundun Pershad* for the respondents.

The judgment of the High Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—We are of opinion that the decision of the lower Court dismissing the plaintiff's suit as barred by limitation under

Art. 14, Sch. II of the Limitation Act is erroneous. It is true that the plaintiffs in the plaint prayed for the reversal of the orders passed under the Land Registration Act VII of 1876, but that prayer may be treated as mere surplusage. The Civil Court has no power to set aside an order passed under the Land Registration Act. The second clause (a), section 89, of the Land Registration Act provides that nothing contained in that Act shall be deemed to "preclude any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which he may deem himself entitled," and that is the clause under which the plaintiffs in this case are entitled to maintain this suit for declaration of their right to the property in dispute, and if they can successfully establish that right in a Civil Court, then under the decree of the Civil Court they would be entitled to have their names registered. On the production of that decree and on a proper application being made by the plaintiffs, the revenue officers will rectify their register in accordance with the declaration made by the Civil Court. Therefore it is quite clear that Art. 14 has no application, because it is not a suit to set aside any act or order of an officer of Government in his official capacity. It is simply a suit for declaration of the plaintiff's title in respect of the property in dispute. Whether the six years' limitation, or the twelve years' limitation applies we need not discuss, because in either case the claim is within time. All that we decide in this appeal is simply this, that the plaintiff's claim on the face of the plaint is not barred under the provisions of Art. 14 of the second schedule of the Limitation Act.

We set aside the judgment of the lower Court and remand this case to that Court for trial on the merits. Costs, as usual, will abide the results.

*Appeal allowed and case remanded.*

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