1888

HAKIM-UN-NISSA v. DEONARAIN.

circumstance, but I do think they are entitled to the benefit of the provision that is contained in the first paragraph of section 135 of the Transfer of Property Act. Hereafter when the appeal comes to be tried upon the merits and in reference to the evidence upon the record, and it has been found what was the true and real consideration for the assignment to the plaintiff of the rights under the foreclosure of the conditional sale-deed, the defendants will be entitled, subject to their not succeeding upon other pleas, to take the bargain off the hands of the plaintiff by paying to the plaintiff the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date when it is repaid to her. That being the view I take of this case, it is clear that the judgment of the learned Judge cannot stand, and that it must be and it is set aside. This appeal being allowed, the case will be remanded to the lower appellate Court under section 562 of the Civil Procedure Code for restoration to the file of pending appeals and for disposal upon the merits. Costs will be costs in the cause.

BRODHURST, J.—I concur in allowing the appeal and remanding the case under section 562 of the Civil Procedure Code.

Cause remanded.

1888
August 13.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

RAMPHUL TIWARI AND ANOTHER (DEFENDANTS) *v.* BADRI NATH (PLAINTIFF). *

Act IX of 1859, *s.* 20—*Forfeiture of rebel's property—Limitation.*

A Hindu widow in possession of a six annas zamíndári share of her husband's, sold the share in 1855 to persons who, in 1858, were convicted of rebellion, and their estates, including the share, were confiscated by Government. The share was granted to other persons as a reward for loyalty, and remained in their possession until 1886, when a suit for possession and mesne profits was brought, just before the expiry of twelve years from the widow's death, by a reversioner to her husband's estate, on the ground that the sale of 1855 could not affect more than the widow's life interest, and that nothing more had been confiscated by the Government in 1858

* Second Appeal No. 338 of 1887, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 6th December 1886, confirming a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 31st July 1886.

and granted to the defendants. The plaintiff had taken no steps in 1855 to question the sale, or in 1858 to assert his claims as reversioner.

Held that the suit was barred by s. 20 of Act IX of 1859. *Ram Dhun* v. *Rajah Bhowanee Singh* (1), *Bhugwan Dass* v. *Banee Dalal* (2), and *Mahomed Bahadur Khan* v. *The Collector of Bareilly* (3), referred to.

THE facts of this case are fully stated in the judgment of Brodhurst, J.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the appellants.

Munshi *Juala Prasad*, for the respondent.

BRODHURST, J.—Lala Badri Nath, the plaintiff-respondent, sued the Secretary of State for India in Council and Ramphul and Kashi Prasad, Brahmins, to obtain proprietary possession of a six annas share in *mauza* Sukurdeha, pargana Dhuriapara, zila Gorakhpur, by avoidance of a sale-deed dated the 25th October 1855, by cancellation of mutation proceedings and of the grant made to the defendants and by dispossession of the defendants, and for the award of Rs. 277-8-0 as mesne profits, with interest.

The plaintiff in his plaint alleged that his brother, Munshi Ganesh Prasad, purchased the share above referred to at auction sale; that he died without issue; that after his death his widow, Musammat Gangan Kuari's name was entered in the Government records by right of inheritance, and that she remained in possession by right of life interest; that she sold the share in dispute to Sheogobind Chand and Lalbehari Chand, co-sharers in the village, on the 25th October 1855 without legal necessity, and that false allegations were inserted in the deed of sale; that in 1858 the purchasers of the share were convicted of rebellion; that all their estates, including six annas share in the suit, were consequently confiscated by the Government; that the six annas share was granted by the Government to the defendants as a *jágir*, and that they are now in possession of it; that Musammat Gangan Kuari had only a life interest in the six annas share; that she died on the 9th March

(1) N.-W. P., H. C. Rep., 1868, p. 139.
(2) S. D. A., N.-W. P. 1864, vol. ii, p. 220.
(3) L. R., 1 I. A., 167.

1888

RAMPHUL TIWARI v. BADRI NATH.

1874; that since her death the defendants have had no right to the share, and that their possession against the plaintiff is illegal.

The Secretary of State in Council pleaded limitation and prayed exemption. The other defendants, in their written statements, averred that the share in suit was confiscated by the Government in 1858, as admitted by the plaintiff, because its then proprietor had been convicted of rebellion; that it was granted to the defendants, who have ever since been in proprietary and adverse possession; that Musammat Gangan Kuari did not transfer merely her life interest in the share to Sheogobind Chand and Lalbehari Chand, but for legal necessity made an absolute sale to those persons of the share, with all its rights and interests; and that as the plaintiff did not sue to establish his claim within the period of one year from the date of attachment or seizure of the property in suit, his claim is barred by s. 20 of Act IX of 1859. The Subordinate Judge who tried the suit framed five issues and held that the plaintiff's rights and interests were not confiscated; that the plaintiff had no right to get possession of the share during the lifetime of Musammat Gangan Kuari; that s. 20 of Act IX of 1859 did not apply, and that the suit was not barred by special or general limitation; that Gangan Kuari died on the 9th March 1874, and that the suit which was instituted on the 6th March 1886, was within time from that date; that as the widow of Ganesh Prasad had only a life interest in the six annas share, it must be considered that her life tenure only was transferred under the deed of sale; that no cause of action had accrued to the plaintiff as against the Secretary of State in Council, and that the sum of Rs. 243 was due by the other defendants to the plaintiff as mesne profits.

The Subordinate Judge decreed the plaintiff's claim for possession of the share in suit and for Rs. 243 as mesne profits against the defendants, Ramphul and Kashi Prasad, and, exempting the Secretary of State for India in Council, dismissed the rest of the claim. The defendants preferred an appeal against this decree, and the District Judge in his decision by which he disposed of the appeal observed:—"Two questions are raised by this appeal; *firs*

that of limitation under s. 20, Act IX of 1859: *secondly*, that of mesne profits. On the first point the appellant's contention appears to me obviously wrong. The order of confiscation is not on the record, but it cannot be assumed that Government intended to confiscate other than the absolute existing rights of the rebel, and the claim of reversioners or mortgagors, being in no wise affected by such confiscation, they are not required to come in within the period prescribed in the Act referred to. S. 20, in my opinion, applies only to persons who claimed present rights in the confiscated property. There are two rulings which, in my opinion, support this view; the one *Ram Dhun* v. *Rajah Bhowanee Singh* (1) and the other *Bhugwan Doss* v. *Bance Dalal* (2). On the second point very little has been said and there is in truth nothing to say. The plaintiff, having established his title, is clearly entitled to mesne profits, and no reason has been shown for refusing to accept the amount as determined by the lower Court. I dismiss the appeal with costs and the usual interest thereon."

Mr. *Kashi Prasad* for the defendants-appellants takes before us, in second appeal, the plea that the suit is barred by s. 20 of Act IX of 1859, and, in support of this plea, he cited the ruling of their Lordships of the Privy Council in *Mahomed Bahadur Khan* v. *The Collector of Bareilly* (3).

On the other hand, Mr. *Ram Prasad*, in supporting, on behalf of the plaintiffs-respondents, the judgments of the lower Courts, refers not only to the two rulings noticed by the lower appellate Court, but also to a ruling of the Privy Council in *Gouri Shunker* v. *The Mahárája of Bulrampore* (4).

Taking these three rulings in the order given above, I observe that the judgment reported in N.-W. P. H. C. Rep. 1868, p. 139, is by Morgan, C.J. and Spankie, J., and is as follows:—

"The Principal Sadr Amín's decision cannot be supported. There is nothing in the records to show that the estate in suit was absolutely forfeited; on the contrary, it would appear that only

(1) N.-W. P. H. C. Rep., 1868, p. 139.
(2) S. D. A., N.-W. P., 1864, vol. ii, p. 220.
(3) L. R., 1 I. A., 167.
(4) I. L. R., 4 Calc., 839.

1888

RAMPHUL TIWARI v. BADRI NATH.

the mortgagee's rights and interests were confiscated, and that only these rights were granted to the defendants; s. 20 of Act IX of 1859 does not apply to fix the plaintiffs' rights as mortgagors. These rights were not affected by the confiscation or the grant, which related only to the mortgagee's rights. We decide this upon the present record. But the record itself is in a very defective condition. Neither the confiscation proceedings nor the grant is among the papers. The case is remanded for trial. We inform the Principal Sadr Amín (if he finds that the confiscation and the grant was confined to the mortgagee's interest) that the limitation of one year is not applicable, and that the suit should be heard on the merits.

The judgment reported on page 220 of S. D. A., N.-W. P., Rep. for 1864 is by Roberts and Spankie, JJ. The headnote at the foot of the case referred to is as follows :—

"To constitute a bar under s. 20 of Act IX of 1859 there must be on the part of Government dispossession of the incumbent, or some open act inconsistent with the pretensions of the holder to put him upon taking measures to assert his claim."

The ruling of the Privy Council reported in *Gouri Shunker* v. *The Mahárája of Bulrámpore* (1) is under a law specially enacted for the province of Oudh, and therefore, as admitted by Mr. *Ram Prasad*, it is not directly applicable to this case. It is, I think, obvious that none of these three rulings is in point.

Next, as to the ruling relied upon by Mr. *Kashi Prasad*, and which is reported in L. R., 1 I. A., 167, the appeal in this case was from a judgment of a Bench of this Court, Morgan, C.J., and Roberts, J. That judgment and the judgment reported in N.-W. P. H. C. Rep., 1868, p. 139, and which is relied upon by the plaintiff-respondent, were both written by Sir Walter Morgan, and they are not in conflict.

The headnote of the Privy Council ruling which I have now to consider is as follows :—

(1) I. L. R., 4 Calc., 839.

"*A* died, the ostensible owner of certain lands, leaving two sons under age. Upon *A's* death *B*, alleging that he was himself the real owner of the lands, caused himself to be recorded as owner in the Collector's books, and took possession. Some years later *B* was convicted and executed as a rebel, and all the property in his possession confiscated, including the land so taken by him.

"The sons of *A* sued for the recovery of the lands of which they had been dispossessed by *B*.

"The suit was brought more than a year after the younger plaintiff came of age and more than a year after the passing of Act IX of 1859, which allows (s. 20) only one year to sue and does not save the rights of persons under disability.

"*Held*, that the enactment applied to all Courts, and that the claim was barred by limitation."

From what is stated on page 171 it appears that the District Judge who tried the suit held that "both the plaintiffs had a right in equity; that the elder plaintiff was barred by law; that the younger plaintiff was not barred; and the Court decreed the claim of the younger plaintiff less the share of Bustee Begum, the mother, with costs in proportion."

On appeal to this Court, Morgan, C.J., and Roberts, J., in disposing of the appeal, observed—"In the view which we take of the case it is not necessary that we should consider whether or not the property claimed really belonged to the plaintiff's father and on his death descended to the plaintiff. It appears certain that at and previous to the time of the conviction of Khan Bahadur Khan it was in his possession and under his control, and that it was seized and confiscated as a portion of his possessions. If so, the plaintiff's right of suit to recover it is now barred by the operation of s. 20 of Act IX of 1859. By that section the rights of persons not charged with the offences therein referred to in respect of any property seized or forfeited are saved. But such saving is subject to the stringent proviso in the latter part of the section, whereby all rights of suit in respect of such property are taken away, unless the suit

1888

RAMPHUL TIWARI v. BADRI NATH.

is instituted within one year from the seizure. The law being conceived in general terms, the Courts are not at liberty to introduce into it any exceptions, however just and reasonable they may appear and however consistent with the principles on which laws of limitation are ordinarily based. The law in question is a special law, and this provision was probably designed to promote the speedy assertion and adjudication of all rights put forward to forfeited property. The exceptions in favour of minority and other legal disability which the general law of limitation of suits (Act XIV of 1859) contains, have no place in this Act and cannot be introduced by the tribunals, which are bound to give full effect to the law. Upon this principle the plaintiffs, notwithstanding that they were minors at the time of the seizure, can claim no exemption from the operation of s. 20, and assuming the property sued for to have really belonged to them, yet as it was seized as a part of the confiscated property of Khan Bahadur Khan, they can now maintain no suit for its recovery, more than one year having elapsed from the time of seizure. The appeals Nos. 16, 21 and 25 are decreed and No. 9 is dismissed, but without costs."

The decision of their Lordships of the Privy Council was pronounced by Sir Montague Smith, and it contains the following passages :—

"The only question in this appeal, which comes before their Lordships in the shape of a special case, is whether the suit brought by the appellants against the Collector of Bareilly and the purchasers from the Government, to recover certain landed property in Bareilly, is barred by limitation.

"The Act of Limitation which is relied on by the Government is Act IX of 1859. That Act was passed for the special purpose of providing a Court for the adjudication of claims by innocent persons upon the property of rebels which had been forfeited to the Government. It established a special Court, consisting of three Commissioners, and suspended the action of all other Courts in respect of such claims. Special modes of proceeding are established and various clauses in the Act relate to that special course of procedure.

But these are provisions in the Act which relate not merely to the Court so established and the procedure under it, but are of a general character and apply to the property forfeited in whatever Court the claims may be made regarding it. Ss. 17 and 18 are also clauses of a general nature, and so it appears to their Lordships is s. 20 which contains the limitation on which the Government rely. The clause is this, 'nothing in this Act shall be held to affect the rights of parties not charged with any offence for which, upon conviction, the property of the offender is forfeited in respect to any property attached or seized as forfeited or liable to be forfeited to the Government; provided that no suit brought by any party in respect to such property shall be entertained unless it be instituted within the period of one year from the date of the attachment or seizure of the property to which the suit relates.'

"It was suggested that this limitation was meant to apply only to claims prosecuted before the Court of Commissioners established by the Act, and it was contended that the Act was of a temporary nature, and that its provisions fell with the purpose for which it was passed. But the Act is not made temporary by any enactment. It was in part repealed by the general repealing statute of 1868, that is, Act VIII of 1868, and the mode of repeal is significant. It is not altogether repealed, for the general clauses to which I have referred, including s. 20, are saved from the operation of the repealing Act. The repeal and saving are both found in the schedule to Act VIII. It is clear from their being thus saved that these clauses were at that time considered by the Legislature to be of a general nature affecting claims to property which had been forfeited, before whatever Court those claims might be prosecuted. The words are perfectly plain. No suit brought by any party in respect of forfeited property shall be entertained unless it be instituted within the period of a year from the date of seizure. It is true that this limitation is introduced by way of proviso. But their Lordships think that, looking at the various parts of the Act, and gathering the purpose and intention of the Legislature from the whole, this was a substantive enactment, and

1888

RAMPHUL TIWARI v. BADRI NATH.

that although it appears under the form of a proviso, it was a limitation intended by the Legislature to apply to all suits brought by any person in respect of forfeited property.

"Assuming then that the case is within the Act, their Lordships will consider the other objections which have been raised. The answer first put forward was that this limitation could be held only to apply to some right, title and interest, using the words of the ordinary execution Acts of the rebel himself. Now it is obvious that this cannot be the right construction of the Act. It would be a wholly insensible enactment if it were, because the Act assumes that the interest of the rebel is forfeited and it is only in respect of claims other than his that this limitation could operate. The Act is declared not to affect the rights of the parties in respect of the property seized. The property is the thing seized as forfeited, whether it be land or a jewel, and the right referred to is the right of an innocent party, other than the right of a rebel in that property.

"Another contention, which seems to have been the only one urged in the High Court so far as it appears from the judgment, is that a saving with respect to parties under disabilities must be taken to be by equitable construction implied in this clause. Their Lordships, however, think it is impossible that any Court can add to the statute that which the Legislature has not done. The limitation is enacted in plain and absolute terms. The Legislature has not thought fit to extend the period which it has prescribed to persons under disability. Where such enlargements have been intended they are found in the Acts containing the limitation as in the general Act. This Act contains no such saving, and their Lordships would be legislating and not interpreting the statute if they were to introduce it.

"It was said that the clauses in the general statute, Act XIV of 1859, relating to disabilities might be imported into this Act, but this cannot properly be done. Act XIV is a code of limitation of general application. This Act is of a special kind, and does not admit of those enactments being annexed to it. It is to be ob-

served that, if it could be done, it would not assist the appellants because the limitation of Act IX is one year only, and the saving in favour of minors in s. 11 of Act XIV would not bring them within time, as a year elapsed after they came of age before the bringing of the present suit.

"One other objection requires to be noticed, that this Act was not retrospective. Undoubtedly Mr. *Doyne* was able to suggest cases in which hardship might arise to persons who would not have a full year to claim before they would be barred under the provisions of this Act, or even where the year might have elapsed between the date of the confiscation and passing of the Act. Although hard cases may arise, their Lordships consider that the Act is plainly retrospective in its operation, and includes claims to forfeited property which had been confiscated previously to its passing.

"Their Lordships are of opinion that the judgment of the High Court is right, and they must humbly advise Her Majesty to affirm it."

Reverting to the present case, I observe that Sheogobind Chand and Lalbehari Chand were zamíndárs of a ten annas share in mauza Sukurdeha and lambardárs of the whole village, and they took illegal possession of the remaining six annas share that had been purchased at public auction by Ganesh Prasad. His widow, Musammat Gangan Kuari, alone sued them for possession, and in 1854 she obtained a decree. In 1855 she also dealt with the share as if she were the sole and absolute owner of it, for she sold it with all its rights and interests to Sheogobind Chand and Lalbehari Chand.

The plaintiff Badri Nath was separated in estate from his brother Ganesh Prasad, but he had a reversionary interest in the six annas share left by Ganesh Prasad, and when his brother's widow made an absolute sale of the share to Sheogobind Chand and Lalbehari Chand, he might have instituted against the vendor and vendees a suit, such as is now constantly brought in our Courts, to have the absolute sale declared to be void. He preferred no claim at all until 1886, and a suit of the description above referred

1888

RAMPHAL TIWARI v. BADRI NATH.

to has been barred for the last twenty years or more. In 1858 the purchasers of the six annas share became rebels, and consequently their estates, including the entire sixteen annas share of mauza Sukurdeha, were confiscated by the Government, and that village and other villages were granted to the defendants-appellants in compensation of losses they had sustained at the hands of the rebels, other estates having been awarded to them in reward of their loyal services. These are facts that are admitted by the plaintiff-respondent.

Judging from the deed of sale of 1855, neither Ganesh Prasad nor his widow, Gangan Kuari, was ever in possession of the six annas share in Sukurdeha; but even if that was not the case Sheogobind Chand and Lalbehari Chand had the whole sixteen annas share of Sukurdeha in their possession and under their control from the 25th October 1855, the date of the sale, and the whole village was seized and confiscated by the Government as a part of their estates on their becoming rebels in 1858.

At the time the village was confiscated by the Government Musammat Gangan Kuari had for nearly three years past ceased to have any interest whatever in mauza Sukurdeha. If Badri Nath considered that he had a right to the six annas share he should, when he saw the whole village confiscated by the Government and granted to the defendants-appellants, have immediately preferred his claim to the share in Court, as any person of ordinary intelligence and prudence would have done. Had he thus acted, his claim would have been adjudicated upon, and possibly he might have obtained a decree which would, on his sister-in-law's death, have given him possession of the share. He, however, omitted to have recourse to a procedure that he obviously should have adopted, and his claim is now, in my opinion, undoubtedly barred by s. 20 of Act IX of 1859, as explained by their Lordships of the Privy Council.

Badri Nath is not entitled to any sympathy. In 1854 when litigation about the share was going on between his sister-in-law and Sheogobind Chand and Lalbehari Chand, in 1855 when his

1888

RAMPHUL TIWARI v. BADRI NATH.

sister-in-law sold the property with all its rights and interests to the same two persons, in 1858 when Sheogobind and Lalbehari who were in proprietary possession of the whole of Sukurdeha, including the share in suit, were convicted of rebellion and the village was confiscated by the Government and was granted to the defendants, on all these occasions Badri Nath stood by and took no action whatever to assert his claims. He did not sue for possession when his sister-in-law died in 1874, and he did not bring this suit until the 6th March 1886, that is, only two or three days before the expiration of a period of twelve years from the death of Gangan Kuari and of about twenty-eight years, thirty-one years and thirty-two years respectively from the confiscation and grant, from the sale and from the decree above referred to. Apparently for thirty years or more he had no intention of preferring a claim for the share, and probably he was induced by some speculation or other to institute a suit when the period of twelve years from his sister-in-law's death was just about to close.

I would allow the appeal, reverse the decrees of the lower Courts and dismiss the suit with all costs.

STRAIGHT, J.—I am of the same opinion.

Appeal allowed.

1890.
December 9.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

HARGU LAL SINGH (DEFENDANT) *v.* MUHAMMAD RAZA KHAN AND ANOTHER (PLAINTIFFS).*

Execution of decree—Attachment—Incorrect description of property sought to be attached—Subsequent purchase of same property under a decree for pre-emption—Civil Procedure Code, s. 274.

In execution of a simple money decree against the holders of a *muáfi* interest in a certain village, who did not possess any zamíndári interest in that village, an attachment was obtained by the decree-holder in 1884 of "an eight biswas zamíndári share of mauza *D*," and under that attachment a sale took place in January 1886. Meanwhile, in December 1885, a decree for pre-emption in respect of a sale by the judgment-debtors in 1881 of their *muáfi* interests in the village, was decreed in favour of persons who were not parties to the litigation in which the attachment of 1884 was

* First Appeal No. 194 of 1888 from a decree of Maulvi Zain-ul-Abdin, Subordinate Judge of Moradabad, dated the 26th June 1888.