1901

NARSINGH MISRA v. LALJI MISRA.

enforced against the father had he been alive has not to rely only on the original bond, inasmuch as within the period of limitation allowed he had put the bond in suit and had obtained a decree upon it, which might have been enforced against the father when the plaintiff brought his suit against the sons. This, we think, is the answer to the pleas urged on behalf of the appellants. We have asked the learned pleader for the appellants to refer us to any article in the second schedule to the Limitation Act which expressly provides a period of limitation for a suit like the present: he has failed to point out any article within which a suit of this nature would, in our opinion, properly fall. We concur in what the learned Chief Justice said in the case of *Natusayyan* v. *Ponnusami* (1):—"In short it is a suit *sui generis*, to which no article of the Limitation Act is specially applicable, but comes under article 120 of the schedule." This article allows a period of six years from the date when the right to sue accrues. That date we held above to have been the 18th June, 1894. As the suit was instituted on the 22nd January, 1900, it follows that, in the view we take, it was within time, and although we cannot concur in all the learned Subordinate Judge says in his judgment, we think the conclusion at which he arrived is right. We therefore dismiss the appeal with costs.

Appeal dismissed.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji

DHANDAI BIBI (PLAINTIFF) *v.* ABDUR RAHMAN (DEFENDANT).*

1901 *February* 6.

Landholder and tenant—Sale of house by tenant—Haq-i-chaharum by whom payable.

In the case of a customary right to receive *haq-i-chaharum*, where it does not appear that the zamindar's right to a share of the purchase-money is limited to a right to claim it from the vendor, the right can be enforced against the vendee also. *Heera Ram* v. *The Hon'ble Sir Raja Deo Narain Singh* (2) referred to.

THE suit out of which this appeal arose was brought by one Musammat Dhandai Bibi as zamindar of Khalsa Dakhni Tola, one

* Second appeal No. 919 of 1898 from a decree of T. W. Morris, Esq., Officiating District Judge of Azamgarh, dated the 10th October 1898, modifying a decree of Pandit Guru Prasad Dube, Munsif of Mohamdabad Gohna, dated the 10th May 1898.

(1) (1892) I. L. R., 16 Mad., 99, at 103.

(2) N.-W. P. H. C. Rep., 1867, F. B., 63.

1901

DHANDAI BIBI v. ABDUR RAHMAN.

of the mohallas of the town of Mao, for recovery of Rs. 119-2-6, being one-fourth of the price of a house sold by the defendant No. 1, Musammat Khatrani Bibi, to the defendant No. 2, Abdur Rahman. The defendants were both tenants of the plaintiff, living in the same mohalla, and the sale was made by a registered deed on the 19th June, 1897. The Court of first instance (Munsif of Mohamdabad Gohna) found the custom, in virtue of which the plaintiff claimed, proved, and gave a decree in her favour against both the defendants. The defendant vendee appealed. The lower appellate Court (District Judge of Azamgarh) found that, according to the terms of the wajib-ul-arz, under which mainly the plaintiff claimed, it was the vendor who had to pay to the zamindar the one-fourth of the purchase-money, and accordingly modified the decree of the Munsif by making it a decree against the first defendant alone. From this decree the plaintiff appealed to the High Court.

Pandit *Sundar Lal* and Maulvi *Ghulam Mujtaba*, for the appellant.

Mr. *S. Amir-ud-din* and Munshi *Gobind Prasad*, for the respondent.

STRACHEY, C. J., and BANERJI, J.—The attention of the lower appellate Court was not called to the decision of the Full Bench in *Heera Ram* v. *The Hon'ble Sir Raja Deo Narain Singh* (1).

That was a case in which the zamindar sued the purchaser and the vendor for recovery of the customary due known as *haq-i-chaharum*, and the question was directly raised as to whether it was a good defence on the part of the purchaser that he had paid the whole of the purchase-money to the vendor. We construe the judgment of the Full Bench as deciding that in the case of a customary right to receive *haq-i-chaharum*, where it does not appear that the zamindar's right to a share of the purchase-money is limited to a right to claim it from the vendor, the right can be enforced against the vendee also. In the present case the lower appellate Court has referred to the terms of the wajib-ul-arz. The only passage bearing on the point occurs in Chapter IV, "On general rights of the tenants," and it is as follows:—

(1) N.-W. P. H. C. Rep., 1867, F. B., 63.

1901

DHANDAI BIBI v. ABDUR RAHMAN.

"If the tenants of a higher class sell their houses they should deduct therefrom the *haq-i-chaharum* (one-fourth) due." That may either mean that the vendor is to leave with the purchaser the one-fourth due to the zamindar, or it may mean that out of the purchase-money received by him he is himself to make over one-fourth to the zamindar. As to the obligation on the purchaser, as distinguished from the vendor, the passage is inconclusive. With regard to the rest of the evidence the learned Judge expressly says, "it shows that there is no fixed rule." By this we can only understand the learned Judge to mean that the *haq-i-chaharum* is sometimes paid by the vendor and sometimes by the vendee. In other words, it is a case where the vendee does not show that the zamindar's customary right is limited to a right against the vendor only. The result is that we must allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance with costs in all Courts.

Appeal decreed.

Before Mr. Justice Knox and Mr. Justice Burkitt.

1901 *February* 6.

JANKI AND ANOTHER (DEFENDANTS) *v.* SHEOADHAR (PLAINTIFF).*

Landholder and tenant—Trees—Property in trees planted by a tenant on his holding.

When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. *Ajudhia Nath* v. *Sital* (1), *Imdad Khatun* v *Bhagirath* (2) and *Kausalia* v. *Gulab Kunwar* (3) referred to.

THE facts of this case were as follows. One Ram Bakhsh, an occupancy tenant, planted certain trees on his occupancy holding. He mortgaged those trees in 1885 to Sheo Ratan. Subsequently to the mortgage Ram Bakhsh relinquished his tenancy, and the holding was taken possession of by the zamindars. Then under a decree on Ram Bakhsh's mortgage the trees were put up to auction and purchased by Sheoadhar. After this the land upon which

* Second appeal No. 15 of 1899 from a decree of Babu Nilmadhab Rai, Judge of Small Cause Court, with powers of the Subordinate Judge of Cawnpore, dated the 28th September 1898, reversing a decree of Pandit Kanhia Lal, Munsif of Cawnpore, dated the 18th July 1898.

(1) (1881) I. L. R., 3 All., 567. (2) (1888) I. L. R., 10 All., 159.
(3) (1899) I. L. R., 21 All., 297.