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RAMANAND v. JAI RAM.

We may note that article 122 of the Limitation Act can in no way help the plaintiffs. As was observed in the case of *Hurrinath Chatterji* v. *Mohunt Mothoor Mohun Goswami* (1), the intention of the law of limitation is not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. In fact the Limitation Act *assumes* the existence of a cause of action and does not define or create one.

We think that the decree of the lower appellate court was under the circumstances correct. We accordingly dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Sulaiman.

LACHMAN PRASAD (PLAINTIFF) v. SHITABO KUNWAR (DEFENDANT.)*

1920 July, 21.

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 164 and 201—Suit for profits—Plaintiff a recorded co-sharer at date of suit—Subsequent order of Revenue Court removing plaintiff's name from khewat.

Where at the date of institution of a suit for profits under section 164 of the Agra Tenancy Act, 1901, the plaintiff is a recorded co-sharer, his right to obtain a decree will not be taken away by an order subsequently passed by a Court of Revenue removing his name from the khewat. The presumption raised by section 201 of the Tenancy Act is irrebuttable so far as a Revenue Court is concerned *Durga Prasad* v *Hazari Singh* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. *Kailas Nath Katju* and Munshi *Damodar Das*, for the appellant.

Dr. *Surendra Nath Sen*, Munshi *Lachmi Narain* and *Shyam Lal*, for the respondent.

TUDBALL and SULAIMAN, JJ.:—Appeals Nos. 1617 and 1618 of 1917 arise out of a suit for profits brought by the plaintiff appellant, Lachman Prasad, who has since died and is now represented by Raja Babu. The original plaintiff sued to recover the profits of a 5 anna 4 pie share in the mahal for the years 1912, 1913 and 1914 against Musammat Shitabo

*Second Appeal No. 1617 of 1917, from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 10th of July, 1917, reversing a decree of Jafar Ali Khan, Assistant Collector, First Class, of Cawnpore, dated the 30th of September, 1915.

(1) (1893) L. R., 20 I. A., 183 (192). (2) (1911) I. L. R., 33 All., 799.

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Kunwar. The defendant, among others, raised the plea that the plaintiff was not the owner of the share recorded against his name. The court of first instance found that the plaintiff was the recorded co-sharer of a 4 anna share, and it gave the plaintiff a decree for a proportionate share in the profits applying section 201 of the Tenancy Act and the presumption made therein Both parties appealed to the District Judge. While the case was pending in the court of first instance the defendant applied to the Revenue Court for the removal of the plaintiff's name from the *khewat*. Apparently, the court of first instance, in that case, disallowed the application and an appeal was preferred to the Collector who, on the 5th of April, 1916, i. e., some six months or more after the decision of the profits suit by the Assistant Collector of the first grade, directed the removal of the plaintiff's name from the *khewat* of that year. This order of the Collector was upheld on appeal and the final order on this matter was passed on the 17th of April, 1917, by the Board of Revenue. The appeals in the meantime were kept pending in the court of the District Judge. The District Judge dismissed the plaintiff's suit *in toto*, on the ground, apparently, that since the institution of the suit the Revenue Courts had themselves removed the plaintiff's name from the *khewat*. Two appeals were preferred to this Court, and the learned Judge of this Court before whom they came for decision referred the two appeals to a Bench of two Judges. The essentials of the case are set out very clearly in his order of reference. He remarks that when the case came up before the District Judge in appeal he took notice of the orders which had been passed by the Revenue Courts and dismissed the claim on the ground that the plaintiff was not a recorded co-sharer *at the time the suit was brought*. The District Judge did not say so in so many words. What he did actually say was as follows :— "This order in the Revenue Court has the same effect as if it were to be discovered now that the plaintiff was not a recorded co-sharer at the time of bringing his suit" It is a little bit difficult to understand what the District Judge meant by this, because as a matter of actual fact plaintiff admittedly was recorded as a co-sharer on the date on which he brought his

suit and was a recorded co-sharer in the years to which the suit relates. What actually the District Judge has done is that he treated the order of the Revenue Court as if it were the decision of a Civil Court such as is mentioned in the last clause of section 201 of the Tenancy Act. The meaning of section 201, so far as the words "shall presume" are concerned was set at rest, one would have thought, by the Full Bench decision in *Durga Prasad* v. *Hazari Singh* (1). It was clearly and distinctly laid down there that the presumption, so far as the Revenue Court was concerned, was irrebuttable, but that it could only be rebutted by the decision of a Civil Court, to which any party might go to establish, by a suit, the fact that the plaintiff had not such proprietary rights in the years in suit to which he laid claim. It is urged on behalf of the defendant respondent that the Revenue Court has found as a matter of fact that the plaintiff's name had been wrongly recorded since the year 1900. It appears that the plaintiff was a sort of puisne usufructuary mortgagee, and that apparently there was some prior mortgagee who brought a suit and, it is said, impleading the plaintiff, obtained a decree for sale, and the plaintiff lost his rights because he did not redeem the prior mortgage. This may or may not be correct, but it is open to the other side to go to the Civil Court and to settle the matter. But so far as the Revenue Court is concerned, it must be presumed that the plaintiff has the right against which his name was recorded in the years in suit and at the date of the suit. We do not think that the District Judge was entitled to go behind the record or to take into consideration the subsequent amendment of the record, which did not operate in regard to the years in suit but operated only from the date on which that order was passed. The Judge was wrong in treating that decision as a decision of a Civil Court such as is mentioned in the last paragraph of section 201 of the Tenancy Act. We think that the decision of the court below is wrong. We allow the appeal and set aside the decision of the court below. We direct that the court do restore the two appeals to their places on its file and determine them according to law. There are other points in the dispute which have to be decided. Costs in this Court will abide the result of the suit.

Appeal decreed.

(1) (1911) I. L. R., 33 All., 799.