

1939

EMPEROR
v.
CHHANGA
MAL

Under the circumstances of this case we consider that the conviction by the Magistrate is correct and we refuse this reference and return the record to the court below.

FULL BENCH

Before Sir John Thom, Chief Justice, Mr. Justice Allsop and
Mr. Justice Ganga Nath

1939
November,
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SUMER CHAND (DEFENDANT) v. MUKHTARI AND OTHERS
(PLAINTIFFS)*

*Land Revenue Act (Local Act III of 1901), section 111(b)—
Period of limitation for filing civil suit—Withdrawal of the
civil suit and filing of a fresh suit—Whether fresh suit barred
by time—Civil Procedure Code, order XXIII, rule 2—Stare
decisis, application of.*

Held, on the principle of *stare decisis*, that where the civil suit directed by section 111(b) of the Land Revenue Act was filed within three months but was subsequently withdrawn with leave to file a fresh suit, and such fresh suit was filed more than three months after the order under section 111(b), the fresh suit was not barred by time.

Apart from the application of *stare decisis*, however, the fresh suit, which is in no sense a continuation of the first suit, would by the operation of order XXIII, rule 2 of the Civil Procedure Code be barred by the limitation of three months prescribed by section 111(b) of the Land Revenue Act.

Mr. G. S. Pathak, for the appellant.

Messrs. Panna Lal and N. C. Shashtri, for the respondents.

THOM, C.J., ALLSOP and GANGA NATH, JJ.:—This is a defendant's appeal arising out of a suit for a declaration of proprietary title. The appeal which is under the Letters Patent is against the order of a learned single Judge of this Court. The only question raised for decision in the appeal is as to whether the suit is time barred.

A suit was instituted following an order by the revenue court under section 111 of the Land Revenue Act. The

*Appeal No. 40 of 1938, under section 10 of the Letters Patent.

revenue court's order was passed on the 17th of June, 1932. The plaintiffs instituted their suit in the civil court as required within three months. This suit, however, was withdrawn on the 7th September, 1933, with the permission of the civil court and the suit out of which this appeal arises was instituted on the 21st September, 1933, i.e., more than three months after the order of the revenue court.

The defendant appellant pleaded that the suit was time barred. This plea was rejected and the suit was decreed. Upon this point the decision of the trial court was upheld by the learned Civil Judge in the lower appellate court. An appeal against this decision has been dismissed by this Court.

It was contended for the appellant that the suit was clearly barred in view of the provisions of order XXIII, rule 2, of the Code of Civil Procedure. This rule is as follows: "In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted." It was urged for the appellant that section 111, sub-section (b) of the Land Revenue Act prescribed a period within which a suit in the civil court must be instituted following an order by the Collector directing such a suit to be filed and that if the suit was not brought within that period it was barred by limitation. It was contended that the bar operated despite the fact that a suit had been filed by the plaintiff within three months of the order of the revenue court, that suit being subsequently withdrawn.

Whether a second suit following the withdrawal of the first suit filed within the period of three months of the order of the revenue court under section 111 of the Land Revenue Act and withdrawn with the court's permission is time barred is a question which has been considered by this Court in a number of cases. The earliest case is *Banwari Lal v. Musammatt Gopi* (1). In

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that case a learned single Judge of this Court held that if the second suit was instituted more than three months after the order of the revenue court it was barred by limitation. That decision, however, was overruled by a Bench of this Court in the case of *Randhir Singh v. Bhagwan Das* (1). This latter case was decided in the year 1913. From 1913 onwards this Court has consistently followed this decision. The decision was followed by a learned single Judge of this Court in the case of *Shah Muhammad v. Kadir Bux* (2) and again by a Bench of this Court in *Nageshwar Bharthi v. Ram Narain Bharthi* (3) and in *Darbari Singh v. Ram Murat Singh* (4).

The ground upon which the decisions in these cases have proceeded appears to have been that the second suit is not a fresh suit but really a continuation of the first. The first suit having been instituted within time it was held that the second suit is not time barred.

The effect of the provisions of order XXIII, rule 2 has not been exhaustively discussed in any of the decisions above referred to. Had we been interpreting for the first time those provisions in relation to suits under section 111 of the Land Revenue Act we should have held that a second suit filed after a first suit has been withdrawn and beyond the three months from the order of the revenue court was time barred. We do not think that the second suit can be regarded in any sense of the term as a continuation of the first. A "fresh" suit in our view is not the continuation of an earlier suit. It is a separate and independent proceeding. If it is not a continuation of the first it is clearly time barred. Section 111, sub-section (b) of the Land Revenue Act prescribes that a suit in the civil court for a declaration of proprietary title must be brought within three months of the order of the revenue court. If it is not brought within three months of the order of the revenue court this suit must fail. The period of three months referred

(1) (1913) I.L.R. 35 All. 541.

(2) (1914) 12 A.L.J. 989.

(3) [1930] A.L.J. 650.

(4) A.I.R. 1927 All. 98.

to in section 111 in our judgment is a period of limitation. In this connection we would refer to the decision of a Full Bench of this Court in *Drigpal Singh v. Pancham Singh* (1).

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Had it not been for the long and consistent course of decisions covering the period from 1913 to date we should, in the view we take of the law, have allowed this appeal. We do not consider, however, that at this stage when the law on the point has been well settled so far as this Court is concerned and when no doubt litigants have relied upon the interpretation which has been placed upon section 111 by this Court we would be justified in overruling these earlier decisions. We do not apprehend that any great injustice would result from leaving the law as it stands. On the other hand the overruling of the earlier decisions without doubt would result in injustice. This would be so, we are satisfied, so far as the respondents in the present appeal are concerned.

On the principle of *stare decisis* we would not in our judgment be justified in reversing the order of the learned single Judge of this Court.

In the result the appeal is dismissed. In all the circumstances we direct the parties to bear their own costs.

(1) I.L.R. [1939] All. 647.