

Before Mr. Justice Straight and Mr. Justice Duthoit.

BHAWANI PRASAD SINGH (DEFENDANT) v. BISHENHAR PRASAD MISE  
AND OTHERS (PLAINTIFFS).\*

*Suit to cancel instrument—Suit for the rescission of a contract—Time from which limitation runs—Act XV of 1877 (Limitation Act), sch. ii, Nos. 91, 114—Equitable estoppel.*

*B, P, and G* sued to cancel a lease of certain land on the ground that the lessor was not competent to grant the same, the defendants being the lessor and the lessee. The lessee's defence to the suit was that the lease had been executed with *B's* knowledge, who caused it to be attested and registered; that it was recognized and adopted by *P* and *G*, who allowed the lessee to take possession of such land and had accepted rent from him in respect thereof; that under these circumstances the plaintiffs were estopped from denying the lessor's competency to grant the lease; and that the suit was barred by limitation, as more than three years had elapsed from the date of the lease. The lower appellate Court affirmed the decree of the Court of first instance in the favour of the plaintiffs on the ground that the lessee was aware that the lessor was not competent to grant the lease. *Held*, on second appeal by the lessee, that the limitation applicable to the suit was to be found in No. 91, sch. ii of Act XV of 1877, and not No. 114, that last article referring to the rescission of contracts as between promisors and promisees, and not to suits by third parties to have an instrument cancelled or set aside; and that, as regards *B*, inasmuch as the existence of the lease became known to him at the time of its execution, and three years from that time had expired, the suit was barred by limitation.

The proper issues as between *P* and *G* and the lessee framed and remitted for trial.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case under s. 566 of Act X of 1877.

Babu *Baroda Prasad Ghose*, for the appellant.

The Senior Government Pleader (*Lala Juala Prasad*) and *Munshi Hanuman Prasad*, for the respondents.

The High Court (STRAIGHT, J., and DUTHOIT, J.,) made the following order of remand:—

STRAIGHT, J.—This is a suit for possession of 4 bighas 19 biswas of land situate in manza Singhur, patti Awal, by cancelment of an *istimrari patta* of the 8th June, 1876, granted by one Lachmi Kuar, defendant in the present suit, to Bhawani Prasad Singh, defendant-appellant, and for mesne profits of 1284, 1285, and 1286 fasli. The

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\* Second Appeal, No. 10 of 1881, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 29th September, 1880, modifying a decree of Babu Mirtonjoy Mukarji, Munsif of Benares, dated the 17th June, 1880.

plaintiffs-respondents Bisheshar Prasad and Bhagwan Prasad are the sons of one Sheo Bakhsh Rai, and they had two brothers, Durga Prasad and Gaya Prasad. Durga Prasad had two sons, Bhairon Prasad and Raghubir Prasad, who died leaving their widows Lachmi Kuar defendant, and Bakht Kuar now deceased, them surviving. Gopal Chand, plaintiff-respondent, purchased the share of Gaya Prasad, and, having brought a suit for possession of it against Lachmi Kuar, Bisheshar Prasad and Bhagwan Prasad, obtained a decree on the 19th August, 1876. While this suit was in progress, namely, on the 8th June, 1876, Lachmi Kuar granted the perpetual lease now in question to Bhawani Prasad, appellant. The substantial defence put forward is that the *patta* was executed by Lachmi Kuar with the knowledge of Bisheshar Prasad, who caused it to be attested and registered; that it was recognised and adopted by Bhawani Prasad Singh and Gokal Chand, who allowed the defendant to take possession of the land, and who had received rent from him in respect of it; and that the proceedings not having been instituted within three years from the date of the lease, the claim was barred by limitation. The Munsif decreed in favour of the plaintiffs, except as to the mesne profits for 1284 and 1285 fasli, which he refused, allowing for 1286 only. The defendant Bhawani Prasad Singh appealed to the Judge, the plaintiffs lodging objections under s. 561 of the Civil Procedure Code, with reference to the mesne profits for 1286 fasli. From the judgment of the lower appellate Court it appears that the pleas of the appellant of limitation, to the jurisdiction of the Civil Court to try the suit, and for the allowance of mesne profits for 1286 were abandoned, and that the sole point relied on by him was that, as Bisheshar Prasad and Bhagwan Prasad (Gokul Chand not being mentioned), plaintiffs, recognised the proprietary title of Lachmi Kuar by allowing her to execute the lease and subsequently adopting the appellant as lessee, they were now estopped from denying her title to grant it. The Judge remarks: "Palpably Lachmi Kuar had no right to grant a perpetual lease to Bhawani Prasad, and the latter person undoubtedly was not misled, but was well aware of the real state of things, for he himself had been the *karinda* or agent of Lachmi Kuar, and his son Ujagar Singh held the same post at the time the *istimvari patta* was executed." Upon this view he dismissed the appeal, at

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the same time allowing the objections of the plaintiffs to the extent of the two-third mesne profits claimed by Bisheshar Prasad and Bhagwan Prasad. Bhawani Prasad Singh, defendant, now appeals to this Court, and pleads, first, that the suit is barred by limitation; secondly, that Gokal Chand being a stranger has no right to sue; thirdly, that Bisheshar Prasad, having acted as agent for Lachmi in and about the execution of the lease, is estopped from now denying her title to grant it. Gokal Chand, plaintiff, also filed objections under s. 561 of the Civil Procedure Code to the disallowance of his proportion of the mesne profits for 1284 and 1285 fasli.

With regard to the plea of limitation, although it seems to have been abandoned in the lower appellate Court, we must of necessity notice it, now that it is pressed here. Looking at the frame of the suit, its primary object is undoubtedly to obtain the cancelment of the *istimrari patta*, and we therefore think that the limitation applicable is to be found in art. 91, sch. ii of Act XV of 1877, namely, three years. The appellant's pleader suggested art. 114, but that obviously refers to the rescission of contracts as between promisors and promisees, and not to suits by third parties to have an instrument cancelled or set aside. This, however, does not materially affect the case, as limitation under either article has to be calculated upon the same principle. The test in the present case is, when did the facts entitling the plaintiffs to have the lease cancelled first become known to them? With regard to Bisheshar Prasad, it is admitted that he knew of the execution of the *patta*, for he got it attested and registered, and he was therefore as well aware in June, 1876, as he is now, of all the facts invalidating that instrument, upon the strength of which he bases the present suit. Under these circumstances we are of opinion that, so far as Bisheshar Prasad is concerned, the plea of limitation should prevail, and to this extent the appeal must be decreed with costs, and the relief asked by Bisheshar Prasad refused. With regard to the plaintiffs Bhagwan Prasad and Gokal Chand, the question of limitation presents different considerations. Their allegation was that the existence of the lease first came to their knowledge in November, 1878, and if this be correct, their suit is in time. But the judgments of both the lower Court are silent upon this point, and before we can finally dispose of this appeal, so far as it affects them, we must

obtain a clear finding as to the date on which they learnt for the first time that Lachmi Kuar had executed the *istimrari patta*. The plea as to the plaintiff Gokal Chand's capacity to sue has no force. He was the transferee of the rights of Gaya Prasad, and stands in his shoes, and is therefore clearly entitled to prefer the present claim. The question of estoppel has been dealt with by the Judge in the passage already referred to in this judgment, and it is unnecessary to discuss it so far as it affects Bisheshar Prasad, because we have excluded him from relief on the ground that the suit is barred by limitation. Had it been otherwise, the further question would have arisen whether he, being *in pari delicto* with Bhawani Prasad, who was in possession, in the matter of the execution of the lease, could properly maintain a suit to set it aside. This point may hereafter present itself, with reference to Bhagwan Prasad and Gokal Chand, though the determination of it will greatly depend upon the finding returned to us by the lower appellate Court upon the issues now remitted. Our present order must therefore be that the appeal, in so far as it relates to Bisheshar Prasad, will be decreed with costs in proportion. With regard to Bhagwan Prasad and Gokal Chand, we remand the case under s. 566 of the Civil Procedure Code for determination of the following issues: (i) When did Bhagwan Prasad and Gokal Chand first become aware of the existence of the *istimrari patta* of the 8th June, 1876? (ii) Have they, by any declaration, act or omission, intentionally caused or permitted Bhawani Prasad Singh, defendant, to believe that Lachmi Kuar had a proprietary title in the 4 bighas 19 biswas granted by the lease, and if so, what was the nature of such declaration, act or omission? (iii) Assuming that Bhawani Prasad Singh, defendant, knew that Lachmi Kuar had no proprietary right in the land, did Bhagwan Prasad and Gokal Chand lead him to believe that they acquiesced in, and consented to, her granting the lease. The findings when recorded will be returned to this Court, and ten days will be allowed for objections from a date to be fixed by the Registrar. The objections of Gokal Chand under s. 561 will be dealt with hereafter, when the final order is passed disposing of the appeal.

*Cause remanded.*