

1929

MAHABIR
SINGH
v.
CHITTA
SINGH.

Hasan, J.

these acts, even although they might have failed to constitute adverse possession as against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging by possession the title which he holds.' This case also is therefore of no avail to the appellants.

The distinction between cases falling under Article 142 and cases where the defence to a suit for recovery of possession is twelve years' adverse possession under Article 144 is well emphasized, if I may respectfully say so, in a decision of a Bench of the High Court at Allahabad in the case of *Jai Chand Bahadur v. Girwar Singh* (1).

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

MOHAMMAD NABEMULLAH AND OTHERS (PLAINTIFFS-APPELLANTS) v. RAMPAL AND OTHERS (DEFENDANTS-RESPONDENTS).*

1929
October, 1.

Limitation Act (IX of 1908) as amended by (Act X of 1922), section 14—U. P. Land Revenue Act (III of 1901), section 111—Partition proceedings in Revenue courts—Plaintiff directed to institute suit in Civil Court for determination of his title within three months—Suit instituted within time in a court having no jurisdiction by deliberately under-valuing it—Plaint returned and presented in proper court after expiry of three months—Plaintiff, if entitled to benefit of section 14 of the Limitation Act.

Held, that since Act X of 1922 amending the Limitation Act was passed the provisions of section 14 of the Limitation

*Second Civil Appeal No. 398 of 1928, against the decree of W. Y. Madeley, District Judge of Rae Bareilly, dated the 10th of October, 1928, confirming the decree of Pandit Damodar Rao Kellar, Subordinate Judge of Rae Bareilly, dated the 23rd of September, 1927.

1929

Act undoubtedly apply to proceedings under section 111 of the U. P. Land Revenue Act, 1901. In other words when a party is required to institute within three months a suit in the Civil Court for the determination of his title and he does institute such a suit and prosecutes it with due diligence he shall have the right, if it be discovered that the court in which he has instituted his suit had no jurisdiction, to obtain the extension contemplated by section 14 of the Limitation Act when proceeding in the court which has jurisdiction. But the indulgence under section 14 should be granted only in cases where the error is an error which might be committed by a reasonable and prudent man exercising due diligence and caution. *Ram Jag Pandey v. Bhagwant Dat Pandey* (1), relied on. *Dhanesh Prasad and others v. Gaya Prasad and others* (2) and *Saiyid Nurul Hasan and others v. Sarju Prasad* (3), referred to.

MOHAMMAD
NABEMULLAH
v.
RAMPAL.

Where in a partition proceedings the assistant collector ordered the plaintiffs under section 111 of the U. P. Land Revenue Act to institute within three months a suit in a Civil Court for the determination of their title and the plaintiffs instituted the suit within that time in the court of the Munsif grossly under-valuing the claim and the Munsif finally returned the plaint on the ground that it was beyond his pecuniary jurisdiction and the plaint was then presented in the court of the Subordinate Judge but the three months had then expired *held*, that the plaintiffs were not entitled to the indulgence of section 14 of the Limitation Act as they deliberately under-valued the relief for the purposes of jurisdiction and they were careless to a degree and they did not act in good faith in so much as they did not act with due care and attention.

Mr. *Naim Ullah*, for the appellants.

Messrs. *M. Wasim* and *Khalig-uz-zaman*, for the respondents.

STUART, C. J. and RAZA, J. :—The facts are these. Rampal a purchaser of the interest of Fazilat Bibi, a co-sharer in Chak Nizam, Mohal Saera Bibi, made an application for partition under the provisions of Chapter VII, Local Act III of 1901. Mohammad Naim Ullah and others, the plaintiffs-appellants, preferred an objection involving a question of proprietary title. The

(1) (1915) 3 O.L.J., 387.

(2) (1915) 18 O.C., 343.

(3) (1917) 4 O.L.J., 553

1929

MOHAMMAD
NAJEMULLAH
o.
RAMPAL.

Stuart, C. J.
and
Raza, J.

Assistant Collector required them under the provisions of section 111 of the Act to institute within three months a suit in a civil court for the determination of the question. They instituted a suit within three months in the Court of the Munsif. They valued the relief at Rs. 500. The Munsif returned the plaint on the ground that the relief had been under-valued and that the suit was beyond his jurisdiction. The plaint was then presented to the Court of the Subordinate Judge, who dismissed the suit on the ground that, as it had not been instituted within three months of the order of the Revenue Authorities it must fail. The learned District Judge in appeal took the same view and the plaintiffs-appellants have come here.

On the general question of limitation applicable to section 111 of Local Act III of 1901 (The Land Revenue Act) it was laid down in Oudh by Mr. LINDSAY in *Dhanesh Prasad and others v. Gaya Prasad and others* (1) that the Limitation Act (IX of 1908) had no application to suits contemplated by section 111, and that it was not possible under the law for the period of limitation to be extended with reference to provisions of section 14 of the Limitation Act. The same view was taken by the present Chief Judge of the Chief Court as Additional Judicial Commissioner in *Saiyid Nurul Hasan and others v. Sarju Prasad* (2). But both those decisions were passed before Act X of 1922 was passed amending the Limitation Act. Formerly the relevant portion of section 29 of the Indian Limitation Act 1908 read as follows :—

“Nothing in this Act shall—

(a) affect section 25 of the Indian Contract Act, 1872,

(b) affect or alter any period of limitation specially prescribed for any suit, appeal

(1) (1915) 18 O.C., 343.

(2) (1917) 4 O.L.J., 553.

or application by any special or local law now or hereafter in force in British India."

1929

MOHAMMAD
NAJEMULLAH
v.
RAMPAL.

Thus before 1922 the period of limitation applicable to proceedings under Local Act III of 1901 was to be found in that Act itself and was not affected by anything stated in the Limitation Act. But since the passing of Act X of 1922 the law has been altered and it now reads :—

Stuart, C. J.
and
Raza, J.

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only so far as and to the extent to which, they are not expressly excluded by such special or local law and the remaining provisions of this Act shall not apply."

We consider that since Act X of 1922 was passed the provisions of section 14 of the Limitation Act undoubtedly apply to proceedings under section III of Act III of 1901. In other words, when a party is required to institute within three months a suit in the civil court for the determination of such a question, and he does institute a suit in a civil court for the determination of such question, and prosecutes it with due diligence he shall have the right, if it be discovered that the court in which he has instituted his suit had no jurisdiction, to obtain the extension

1929

MOHAMMAD
NABEMULLAH
v.
RAMPAL.

Stuart, C. J.
and
Raza, J.

contemplated by section 14 when proceeding in the court which has jurisdiction. Thus the appellants have a right to invoke the aid of section 14; but at the same time they must show that they can be granted this aid. Upon that question, it is to be noted that on the findings of the courts below (with which we agree) the appellants displayed the greatest carelessness in their proceedings. They valued the relief at Rs. 500 for the purpose of jurisdiction. This is a valuation which on the face of it is very much below the correct valuation. The plaintiff-appellants are in possession of the land and should know what its value is. Yet they went into a wrong court and valued their relief at Rs. 500 when they should have known that the relief was actually some Rs. 4,500. It is true that they did nothing fraudulent. They did not attempt to defraud the Government of stamp duty for, as the suit was a suit for a declaration, the stamp duty would in any circumstances have been what they paid, that is to say Rs. 10, but they were careless to a degree and they did not act with good faith in so much as they did not act with due care and attention. The Chief Judge of this Court decided when he was Additional Judicial Commissioner of the Judicial Commissioner's Court in the year 1916 an appeal in which this question required judicial determination. *Ram Jag Pandey v. Bhagwant Dat Pandey* (1). We accept the views enunciated in that single Judge decision, and applying those views we are of opinion that the plaintiffs-appellants cannot claim the benefit of section 14, as they did not prosecute in the Munsif's Court in good faith. There is nothing to be said against their honesty but they cannot be held to have acted in good faith. We may repeat the remarks that were made in 1916 :—

“Unless the provisions of section 14 are to be applied indiscriminately to extend the

(1) (1915) 3 O.L.J., 387.

period in all cases in which the plaintiff has acted without fraud, it is obvious that some general criterion must be laid down to distinguish cases in which indulgence is to be granted from cases in which indulgence should not be granted. I do not propose to enact any hard and fast rule but it appears to me that it would not be an unfair working rule to lay down that indulgence should be granted only in cases where the error is an error which might be committed by a reasonable and prudent man exercising due diligence and caution."

MOHAMMAD
NABEMULLAH
v.
RAMPAL.

Stuart, G. J.
and
Raza, J.

Applying these principles we find that the error here was not an error, which could be committed by a reasonable and prudent man exercising due diligence and caution. In these circumstances we accept the finding of the courts below and dismiss this appeal with costs.

Appeal dismissed.