

1892 about by the Collector's partition; and no Court of execution has any authority so to alter the decree that is sought to be executed in the execution proceedings. The decision of the lower Appellate Court is, therefore, in our opinion wrong in law and must be set aside, and the case sent back to that Court to be tried with reference to the other questions arising in it. The appellant will have his costs in this Court.

KRISHNA  
ROY  
v.  
JAWAHIR  
SINGH.

*Appeal allowed and case remanded.*

G. S.

*Before Mr. Justice Pigot and Mr. Justice Banerjee.*

1891  
July 8.

GIRJANATH ROY CHOWDHRY AND ANOTHER (TWO OF THE DEFENDANTS) v. RAM NARAIN DAS (PLAINTIFF), WHO APPEARED, AND OTHERS (DEFENDANTS), WHO DID NOT APPEAR IN THIS APPEAL.\*

*Public Demands Recovery Act (Bengal Act VII of 1880), s. 8 (b), cl. 3, and s. 10—Certificate, Suit to set aside—Amount not "due"—Limitation Act (XV of 1877), s. 14.*

Where rent was payable jointly to certain wards of Court, and another proprietor, whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate, under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards. *Held*, that there being no right at law to claim any separate share of the rent, there was no sum "due," and therefore under section 8 of the Act the certificate was invalid and must be cancelled.

The plaintiff was allowed under s. 14 of the Limitation Act to deduct the period during which he was *bonâ fide* seeking redress from the Revenue authorities, who had no jurisdiction to deal with the questions raised by him, and the suit was held to be not barred by lapse of time.

THIS suit was brought to cancel a certificate made by the Collector of the 24-Parganas, under Bengal Act VII of 1880, and to set aside a sale under that Act of the plaintiff Ram Narain's share in a certain *ganti* tenure.

The tenure in question was owned in equal moieties, one moiety by the defendant No. 1, Girjanath, the defendant No. 2 Satendra Nath, and Manmotha Nath (who was not a party to the suit), the

\* Appeal from Appellate Decree No. 284 of 1890, against the decree of H. F. Matthews, Esq., Officiating Judge of Jessore, dated the 17th December 1889, affirming the decree of Baboo Krishno Mohun Mookerjee, Subordinate Judge of Khulna, dated the 31st of December 1888.

heirs of Pran Nath Roy Chowdhry, and the other moiety by Mohendro Nath Roy Chowdhry and others, the *sadar jama* being collected by the owners in equal shares. The moiety owned by the heirs of Pran Nath Chowdhry was under the management of the Court of Wards, and whilst it was under such management a certificate had been issued by the Collector under Bengal Act VII of 1880 for realization of a moiety of the rent, against Uma Nath Roy Chowdhry, in whose name the estate stood, though it had been sold by him to Gokulmoni, defendant No. 5, the wife of the plaintiff, on 19th Assar 1284 (2nd July 1877). In execution of this certificate a moiety of the *ganti* tenure was put up for sale and purchased by the defendant No. 4, Madan Mohan Chatterjee, by whom it was sold to the plaintiff for Rs. 1,000. Subsequently in 1885 Manmotha Nath (the joint-owner of a 3 annas share of the estate) was released from the guardianship of the Court of Wards, and the Collector issued another certificate under Bengal Act VII of 1880 for realization of the rent for the years 1289, 1290, and 1291 (1882, 1883, 1884) against Ram Narain and others in respect of the 5 annas share of the estate which the Court of Wards then represented. The notice of this certificate was served on the 10th September 1885. Ram Narain objected to this certificate on the ground that the rent being payable jointly to Girja Nath, Satendro Nath and Manmotha Nath, the Court of Wards could not legally demand payment of it separately on behalf of the two shares only without joining Manmotha Nath, the joint-owner of the 3 annas share of the estate. The Deputy Collector decided adversely to Ram Narain on the 15th February 1886 and his decision was upheld by the Collector on appeal on 26th July 1887. The *ganti* was therefore sold by auction on the 13th October 1887, and was purchased by the defendants Girja Nath and Satendra Nath for Rs. 300. The suit was instituted on the 9th May 1888.

The only material defence was that the suit was barred by limitation, as it had not been brought during one year from the date of the service of notice.

The Subordinate Judge found that the certificate was illegal and the sale void.

1891
GIRJANATH
ROY
CHOWDHRY
v.
RAM
NARAIN
DAS.

1891

GIRJANATH  
ROY  
CHOWDHREY  
v.  
RAM  
NARAIN  
DAS.

On appeal the District Judge came to the same conclusion, and on the question of limitation observed as follows:—

“The provisions of Bengal Act VII, 1880, are of a very stringent and summary character, and hence it seems only just that parties imagining themselves aggrieved by acts of the Revenue authorities, purporting to be done in compliance with that law, should be allowed full opportunity of having the legality of such proceedings tested by a suit in the civil courts, if they are willing to incur the risk and expense of ultimately resorting there. The remarks of the Calcutta High Court in the case of *Ram Logan Ojha v. Bhawani Ojha* (1) afford authority for saying that section 14 of the Limitation Act is applicable even to proceedings arising out of orders made under Bengal Act VII of 1880. This view also seems to be supported by the ruling of *Khetler Mohun Chuckerbutty v. Dinabashy Shaha* (2); although it is true that the special period of limitation referred to in that case was the period under the Registration Act and not the Public Demands Recovery Act, still the principle is the same. The decision in *Sadhusaran Sing v. Panchdeo Lal* (3), relied on by the appellant, is far from being fatal to the plaintiff's case.”

Mr. Pugh and Baboo Surendronath Motilal for the appellants.

Baboo Saroda Churn Mitter for the respondent.

The judgment of the Court (PIGOR and BANERJEE, JJ.) was as follows:—

This is a suit to set aside a sale purporting to have been made under the Public Demands Recovery Act. The lower Courts have both decided in favour of the plaintiff, and this is an appeal against that decision.

Two points are enough in this case for us to deal with. The *first* is the question of limitation; and *secondly*, a question which does not seem to have been discussed before the District Judge, viz., the validity of the certificate. We should gather that the question of the validity of the certificate was not debated before the District Judge, inasmuch as he does not consider that question in his judgment at all, but simply deals with the question as to whether the suit was barred by limitation. It will be convenient, therefore, to deal with the question of limitation after dealing with the question of the certificate.

(1) I. L. R., 14 Calc., 9.

(2) I. L. R., 10 Calc., 265.

(3) I. L. R., 14 Calc., 1.

The certificate was granted in respect of arrears of rent said to have been due by a plaintiff, Ram Narain (leaving aside the names of persons erroneously entered as parties), in respect of the *ganti*, a share in which he is the owner of. The defendants 1 and 2 had been [together with Manmotha Nath, not a party to this suit] under the Court of Wards; and it has been found that before Manmotha Nath was released from the guardianship of the Court of Wards rent was payable jointly to defendants 1 and 2, and to him in respect of their zamindari share in the *ganti* rent. Manmotha Nath was released from the wardship, and a certificate or what purported to be a certificate was issued by the Collector in which there was a demand for the proportionate share of the defendants Nos. 1 and 2 in the *ganti* rent payable by the holders of it to the superior tenure. After Manmotha Nath was released it does not appear that any rent was collected from Ram Narain on behalf of defendants 1 and 2 in respect of the *ganti*. Now assuming as we do from the finding of the lower Court that there was a legal right to claim rent payable to defendants 1 and 2, and to Manmotha Nath together, there is nothing in the case to show that separate rent was legally claimable in respect of a share of the total rent appropriate to the interests of defendants 1 and 2. An express agreement to pay these shares of rents or payments of those shares of rents from which an agreement may be inferred might constitute a claim for demand of separate payment in proportion to the rent. But there is nothing of that sort in this case. We have been referred to certain evidence, which we must take it is the only evidence in the case which could be used, in support of the conclusion that separate rent was claimable legally in respect of the shares of defendants Nos. 1 and 2. That evidence consists merely in the assertion by one witness that after Manmotha Nath was released from the guardianship of the Collector he received rent appropriate to his individual share in this mehal. It is not stated from what tenants the rent was received; it is not said what amounts were received, nor is Ram Narain named as one of those who paid him his separate share. In fact that evidence is nothing to the purpose. We have it then that at the date of the issue of the certificate and prior to the date of the notice, which must have

1891

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 GIRJANATH  
 ROY  
 CHOWDHRY  
 v.  
 RAM  
 NARAIN  
 DAS.

1891  
 GIRJANATH  
 ROY  
 CHOWDHRY  
 v.  
 RAM  
 NARAIN  
 DAS.

been given in Form 3 of the Schedule to the Act, there was no right at law to claim from Ram Narain separate payment of the share of rent appropriate to the interests of defendants 1 and 2. A suit brought in their names for that amount alone must have been dismissed. There was, therefore, no sum due in respect of arrears of rent from Ram Narain to those two persons, by which of course is meant to those two persons separately. Strictly speaking, no sum was legally due to them from him at all. There was a liability to pay the total rent, or such portions of it, as had been made separately payable by an agreement express or implied : but only that. As to them, there was no such agreement, and therefore there was no amount claimable separately by them at law.

It is argued that the Collector's certificate, which must be founded upon the manager's verified notice (verified as a plaint), is a sufficient answer to the observation that no arrears of rent were due by this defendant to these two particular persons separately. We think there is no foundation for such a proposition. The law does not allow the Collector to make by his certificate a sum legally claimable and recoverable which was not claimable and recoverable legally before he issued it. This Act was passed to devise a speedy and convenient remedy for the recovery of money due, but it does not in any way empower a Collector first to make a sum due and then to levy it under a certificate. A certificate for money in respect of a claim which has no foundation whatever at law ought not to issue. Section 8 provides "that no certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the grounds" set out in that section. One of these, the 3rd, is that the amount stated in the certificate was not due by the judgment-debtor under the certificate. Here the amount was, as we have said, not due : and on this ground the certificate must be cancelled and the sale set aside.

Then as to limitation, the question is whether section 14 of the Limitation Act applies. We think it does. The sections giving a party the right of appeal to the Collector and the Commissioner do not appear to give these officers the faculty of enquiring into a question such as has arisen here. The question was

raised by Ram Narain in his fifth point before the Collector, who declined to entertain it. Probably he was right and could not adjudicate upon it. The question which he had to determine was whether, assuming the claim to be legally founded, the liability under it existed. That being so, the period during which plaintiff was *bonâ fide* seeking to have redress in Courts which had no jurisdiction to deal with the question now before us must be struck out, and if that period is struck out, the suit is not barred by any period of limitation.

For these reasons we hold that the appeal must be dismissed with costs.

*Appeal dismissed.*

A. F. M. A. R.

*Before Mr. Justice Pigot and Mr. Justice Banerjee.*

NILCOMAL PRAMANICK AND OTHERS (PLAINTIFFS) *v.* KAMINI  
KOOMAR BASU (DEFENDANT).\*

1891  
GIRJANATH  
ROY  
CHOWDHEE  
*v.*  
RAM  
NARAIN  
DAS.

1891  
August 31.

*Limitation Act (XV of 1877), Schedule II, Arts. 132, 135, 147—Limitation Act (IX of 1871), Art. 132—Suit on a mortgage bond—Conditional sale—Foreclosure—Bengal Regulation XVII of 1806, ss. 7, 8—Transfer of Property Act (Act IV of 1882), s. 67, cl. (a).*

In a suit for possession of land on the allegation that it was mortgaged by the defendant's father in July 1849 to the plaintiffs' predecessors, by way of conditional sale, by a deed which fixed no time for payment, and made no provision as to the mortgagee taking possession; that the mortgagor made various payments down to 1875, and that subsequently foreclosure proceedings were instituted under Regulation XVII of 1806, and the mortgage foreclosed in 1877, the lower Appellate Court found that the deed was duly executed, but that the foreclosure proceedings were irregular and invalid. *Held*, that inasmuch as the deed fixed no time of payment, and the suit was brought more than twelve years after the date of the mortgage deed, and also more than twelve years after the date of the alleged last payment to the mortgagee, which was in 1875, the suit was barred by Art. 132, Schedule II of the Limitation Act. Having regard to the provisions of section 67, cl. (a) of the Transfer of Property Act, the mortgage

\* Appeal from Appellate Decree No. 657 of 1890, against the decree of Baboo Ananda Kumar Surbadhicary, Subordinate Judge of Dacca, dated the 14th March 1890, reversing the decree of Baboo Krishna Chunder Dass, Munsiff of Munshigunge, dated the 5th of January 1889.