APPELLATE CIVIL.

Before Adami and Kulwant Sahay, J.J.

LALU MATHURA PRASAD SINGH

v.

LALU JAGESHWAR PRASAD SINGH.*

1926.

Jan., 8.

Chota Nagpur Encumbered Estates Act, 1876 (*Act VI of* 1876), *sections* 2, 3, 8, 11 *and* 12—*debt, revival of—release after approval of scheme by Commissioner—section* 12(6), *applicability of—Order under section* 2, *effect of—Limitation Act*, 1908 (*Act IX of* 1908), *section* 15—*whether applicable—original debt, if revived.*

Held, (*i*) that an order under section 2 of the Chota Nagpur Encumbered Estates Act, 1876, bringing an estate under protection, is a vesting order staying all proceedings and, therefore, in computing limitation, the period of protection should be excluded under section 15, Limitation Act; (*ii*) that when the bar imposed by section 3(*1*) is removed by a subsequent notification releasing the estate, claims against the estate are revived under section 12 of the Act; (*iii*) that, in the case of a debt, what is revived is the original debt at the original rate of interest;

Although the sixth clause of section 12 purports to apply to cases covered by the second clause of that section, which provides for revival of a debt in case of the estate being released before the scheme has been approved by the Commissioner, the section must be construed to provide for all cases where the estate is released from management before the debts have been paid off.

Appeal by the defendants.

The material facts of the case were as follows :—

This appeal arose out of a suit for the recovery of Rs. 20,705-7-1 as principal and interest due upon a hand-note executed by defendant no. 1 as karta of

* Appeal from Original Decree no. 87 of 1923, from a decision of Rai Bahadur Amrita Nath Mitra, Special Subordinate Judge of Palamau, dated the 16th February, 1923.

the family on behalf of himself and his brother, defendant no. 2. The hand-note was executed in favour of the father of the plaintiff on the 18th of October, 1902, for a sum of Rs. 6,918. The loan was taken for the purpose of meeting the cost of litigation and saving the joint family property. On the 18th of June, 1904, the defendants applied to the Deputy Commissioner for protection under the Chota Nagpur Encumbered Estates Act, and on the 30th of October 1904, an order was passed vesting their estate under a manager under the provisions of the Act. The order was published in the Gazette on the 11th of January, 1905. After publication of the order the manager called upon the creditors to submit their claims. The defendants in their application had given a list of their debts and the second item in the Schedule was the debt of Rs. 6,198 on the bond of 18th of October, 1902. Interest at 1 per cent. per month had risen to Rs. 829-11-0 and the total debt was Rs. 7,027-11-0. The application was signed and verified by both the defendants. The manager proceeded to determine the claims under section 8 of Act VI of 1876 and the defendants admitted the claim. The manager thereafter drew up a scheme for the repayment of this debt of Rs. 6,198 and interest Rs. 914. That scheme was Exhibit 4. The scheme was submitted to the Commissioner under section 11 of the Act and was approved by him. According to section 11, Act VI of 1876, as it stood before the amending Act, Bihar and Orissa Act VIII of 1922, a scheme

"when approved by the Commissioner shall be carried into effect."

The manager, however, failed to carry out the scheme so far as it affected this debt, and no money was received from him by the plaintiffs. On the 21st of June, 1921, the estate was released from the operation of the Act by notification under orders from the Board of Revenue. The notification was published in the Gazette on the 13th of July, 1921. The notification did not state under what section the release was

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

ordered. It merely stated that the provisions of the Act had ceased to apply to the proprietor of the estate. Thereafter the plaintiff, Lalu Jageshwar Prasad Singh, instituted a suit out of which this appeal arose on the 9th of May, 1922. The plaintiff claimed that the period during which the estate was under protection of the Act should be excluded in computing limitation. The plaint also alleged that the defendants had admitted the debt both when they submitted their application for protection and also when the manager was determining the claims.

The defendants pleaded that the suit was barred by limitation and that there was no legal necessity for the loan in 1902. Defendant no. 1 admitted execution of the hand-note but denied that consideration had passed. He alleged that in 1904, when he was intending to apply for protection under the Chota Nagpur Encumbered Estates Act, knowing that he had a daughter to marry and that it would be hard to obtain money from the manager, he executed several hand-notes in collusion with and in favour of various relatives, so that those relatives might submit claims to the manager and get the money from him and make the money over to the defendant so that he could spend it on his necessary expenses. Defendant no. 2 denied that he was any party to the loan, or that defendant no. 1 borrowed the money for family necessity. He alleged that he was separate from defendant no. 1 and was not bound by the hand-note.

The Subordinate Judge considered the question whether the period during which the estate was under protection could be excluded when computing the period of limitation. He noticed that the second clause of section 12 of the Act did not meet the present case, because the estate was released after the Commissioner had given approval, and, therefore, the provisions of the sixth clause to that section could not be applied to the case in their strict interpretation; but he found himself unable to put a strict interpretation upon the section and found that the

sixth clause provides in general terms for all cases where the estate is released from management before the debts have been paid off. He held that section 12 applied to the case and that the plaintiff was entitled to the benefit of the section. He also found that the provisions of section 15 of the Limitation Act applied and enabled the plaintiff to exclude the period of protection. He disbelieved the defendant's story about the absence of consideration and also the story about the taking of the money in order to provide for the defendant's daughter's marriage. He held that defendant no. 1 borrowed the money as karta of the joint family for the purposes of the family and that defendant no. 2 was liable. He decreed the plaintiff's suit.

Ganga Charan Mukerjee, for the appellant: My first submission is that in spite of section 3, Chota Nagpur Encumbered Estates Act, a suit could have been instituted in respect of the present claim during the period of management; and, the plaintiff having neglected to sue, the present suit is barred by limitation. The reason is that "such debts and liabilities" mentioned in section 3 have reference to those mentioned in section 2, and have no reference to the determined debts of section 8.

[KULWANT SAHAY, J.—But the debt admitted and determined by the manager is a debt all the same.]

There is a considerable difference; one is the original unproved claim while the other is a judicially determined debt having the force of a decree. Section 3 bars a suit in respect of the former and not in respect of the latter. The only authority on the point is *Kameshwar Prashad* v *Bhikhan Narain Singh* (1) which seems to be against me. But it was a decision before the amendment of 1909, whereby elaborate rules of procedure for a judicial determination of what is "justly due" were laid down. The decision of the manager is now subject to appeals to the Deputy

(1) (1893) I. L. R. 20 Cal. 609.

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

Commissioner and the Commissioner, and to revision by the Board of Revenue. Hence their Lordships in *Kameshwar Prashad* v. *Bhikhan Narain Singh*(1) considered it to be merely a debt admitted by the manager and not a judgment-debt having the force of a decree.

My next submission is that assuming that the plaintiff had no right to sue upon his debt during the period of management, he had still a right to sue when there was a default in the payment of the debt by the manager according to the scheme.

[KULWANT SAHAY, J.—But the creditor is not a party to the scheme.]

Nevertheless he is bound to accept payments under it. Section 11 strictly enjoins that a scheme shall be carried into effect and if it is not so carried the management becomes ultra vires and the protection under section 3 is forfeited.

My next submission is that even if there is a bar imposed by section 3 in respect of such a debt, there is no revivor of the same under section 12(6) which refers only to cases covered by section 12(2) which in turn has reference to cases prior to the approval of the scheme. There can be a revivor of the claim only in the circumstances mentioned in clause (2) of section 12 which, however, does not cover the present case inasmuch as the estate was released after the scheme had been approved by the Commissioner. We have to read the section as it is and we will not be justified in speculating as to what the meaning ought to have been. By the amending Act VIII of 1922 the legislature has extended the scope of section 12(6), so as to cover a case like the present one. This enactment, which evidently supplies an omission which existed in the old law, is only prospective inasmuch as the legislature has not by express words given it retrospective effect [See *Javanmal Jitmal* v. *Mukta Bai*(2)].

Section 15, Limitation Act, is similarly inapplicable. The bar contemplated by section 3 is a bar not

(1) (1893) I. L. R. 20 Cal. 609. (2) (1890) I. L. R. 14 Bom. 516 (525).

merely for the period of management but is an absolute bar once for all. Under that section the suit is not stayed, but it is barred in consequence of the publication of the vesting order. If there is a mere stay and not a bar there is nothing to prevent the revivor of the original debt after release, even though the determined debt may have been paid. This anomalous position will render the whole Act infructuous.

My last submission is that even if there is a revivor, what is revived is the determined debt at the reduced rate of interest and not the original debt which is merged in the determined debt. A determination of the debt under section 8 is conclusive proof of what is "justly due" to the creditor.

Susil Madhab Mullick, (with him *Hareshwar Prasad Sinha*) for the respondent. The effect of the vesting order is to stay the suit and this stay continues until the management lasts. It has been held in *Kameshwar Prashad* v. *Bhikhan Narain Singh* (1) that a suit is barred during the continuance of the management.

The stay comes to an end when the management is over. I rely on *Raja Jyoti Prasad Singh Deo* v. *Ranjit Singh*(2).

[KULWANT SAHAY, J.—There the stay was for a limited period.]

Here also it will be limited to the period of management. It was held in *Lakhan Chunder Sen* v. *Madhusudan Sen*(3) which was affirmed by the Judicial Committee in *Nrityamoni Dassi* v. *Lakhan Chandra Sen*(4) that if a person who seeks a remedy in the civil court was incompetent to institute a suit on account of certain things having happened, the time during which he is so prevented should be excluded.

[KULWANT SAHAY, J.—That case proceeded upon section 14 and not section 15.]

(1) (1893) I. L. R. 20 Cal. 609. (3) (1908) I. L. R. 35 Cal. 209.
(2) (1921) 6 Pat. L. J. 328. (4) (1916) I. L. R. 43 Cal. 660, P. C.

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

But the same principle should be applied on the analogy of section 14. The same view has been taken in *Shaikh Abdul Rahim* v. *Mussammat Barira*(1).

[KULWANT SAHAY, J.—But if an absolute bar is imposed by section 3, section 15 would not apply.]

Yes. But my submission is that the bar subsists so long as the order continues.

My second submission is that in considering section 12, the subsequent amendment must be left out of account. The meaning of section 12 is that so long as there is a workable scheme the estate cannot be released, but when there is no scheme to be worked out, then and then alone the estate can be released. Hence the section in effect contemplates all cases of release. Moreover in the present case there has been no approval, because it has been subsequently cancelled by the Board. Clause (*2*) of the section must be read to imply an approval subject to revision by the higher tribunal. If, therefore, the approval is set aside at any time, the position would be just the same as if there had been no approval and the relinquishment of the management in these circumstances will be covered by clause 2 of the section.

Lastly, I submit that the original debt cannot be said to have merged in the determined debt and what is revived therefore is not the reduced amount fixed by the Commissioner but the original debt which still subsists. The Act having ceased to apply anything done under the Act will have no effect.

Cur. adv. vult.

S. A. K.

ADAMI, J. (after stating the facts set out above, proceeded as follows): Mr. Gangacharan Mukherji has argued this appeal with great ability on behalf of the defendants-appellants. The main part of his argument has been devoted to the question of limitation.

(1) (1921) 2 Pat. L. T. 556.

The three questions which arise under this head are: Whether section 12 of the Chota Nagpur Encumbered Estates Act, clause 6, saves the suit from being barred by limitation, secondly, whether if section 12, clause 6, does not apply, section 15 of the Limitation Act applies; and thirdly, whether there was such acknowledgment by the defendants as would save the suit from being barred by limitation. Mr. Mukherji has taken us through the sections of the Encumbered Estates Act and his argument is that the first clause of section 3 of the Act is an absolute bar to all proceedings and suits after the publication of an order under section 2 of the Act. He points out that the sixth clause of section 12 refers only to a release covered by clause 2 of the section, that is to say

"if the Commissioner at any time before a scheme has been approved by him under section 11 thinks that the provisions of this Act should not continue to apply to the case of the holder of the said property or his heir."

In the present case the estate was released after approval of the scheme by the Commissioner, and therefore the sixth clause cannot apply and there can be no revival of claims. His contention is that the first clause of section 3 which is the bar to all proceedings still holds good even though the estate has been released because sub-clause 6 of section 12 does not apply in the circumstances of this case. There is no doubt, as has been often remarked, that the Chota Nagpur Encumbered Estates Act, 1876, is inartistic in its drafting. That this has been recognised with regard to such circumstances as we find in the present case is shown by the amendments made by the Legislature by the Bihar and Orissa Act VIII of 1922, whereby in section 4 the following words have been added to the second clause of section 12:

"Or if after the scheme has been so approved an application is made under section 11B for the relinquishment of the property."

The framers of the Act do not seem to have contemplated that even when a scheme has once been approved and has to be carried into effect under section 11, there could be a release under any circumstances other than those mentioned in the first three

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

ADAMI, J.

clauses of section 12, and as the Act stood before the amendment of 1922 the strict wording of the Act seems to show that no revivor was contemplated in circumstances other than those mentioned in clause 2 of section 12. The learned Subordinate Judge has, I think, taken the right view in holding that too strict an interpretation cannot be placed on section 12.

Section 3, it is true, states that on the publication of an order under section 2 all pending proceedings shall be barred and all processes, executions and attachments for, or in respect of, debts and liabilities shall become null and void, whereas the second and third clauses are limited in their operation to the period during which such management continues. It is contended that save in the case mentioned in section 12, clause 6, the bar shall be absolute and that no process or execution or attachment can, after the publication of an order under section 2, be served or made. But surely when the order itself is cancelled by a subsequent notification, the effect of the first clause of section 3 disappears. It could never have been in the contemplation of the Legislature that the mere approval by the Commissioner of a scheme should for ever deprive all creditors of redress. But I think it is quite clear that even were it to be held that as the Act is drafted no revivor of proceedings is allowed, the provision of section 15 of the Limitation Act must apply. Though the word " bar " is used with regard to pending proceedings in clause 1 of section 3, its real meaning is clearly that they should be stayed, for clause 6 of section 12 shows that in certain circumstances proceedings may be revived. In the present case we have not to do with proceedings which were pending at the time the notification was published; the question is whether any process can issue or any suit be instituted after the order of release. Clause first of section 3 states that processes, executions and attachments shall become null and void on the publication of an order under section 2; after that order has been cancelled, there is no bar to any process, execution or attachment; there

has really been merely a stay. The order under section 2 bringing the estate under protection was a vesting order staying all proceedings, and under section 15 of the Limitation Act I am satisfied that there should be a revivor, the period of protection being excluded. I would refer to the case of *Raja Jyoti Prasad Singh Deo* v. *Ranjit Singh*(1). It is true that there Das, J., did not consider the difficulty which we have now before us with regard to the wording of clause 2 of section 12; but it may be that in that case the point did not arise. The general principles however are given as to the right of revivor. I am quite satisfied that the plaintiff is entitled to exclude the time during which he was barred from suing on the debt due to him by reason of the estate being under protection.

Mr. Mukherji has argued that after the manager had examined the claim and had judicially determined the debt under section 8 of the Act, the plaintiff could have sued the manager within three years of the determination of the debt; but I think that this contention cannot in any way be upheld for under the wording of clause first of section 3 any such suit would be barred. Secondly, it is contended that when the manager heard the claims and determined the debt and thereafter drew up a scheme, he was in fact contracting with the plaintiff to pay the debt in a certain manner and within a certain time; and when in 1916, which was the last date of payment under the scheme, he had failed to pay to the plaintiff, the plaintiff might have sued him on the contract. But it is clear that in a case like this there was no contract between the manager and the plaintiff. The manager determined the scheme without reference to the wishes of the plaintiff.

Thirdly, it is argued that, even if a suit in respect of such determined debt was barred during the period of management, what would revive after release from management would be the debt determined by the

(1) (1921) 6 Pat. L. J. 328.

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

ADAMI, J.

manager and not the original debt. In the present case the manager determined the original debt to be due but decided that he would pay interest at 6 per cent. and not at 12 per cent. per annum. After the release the whole scheme came to nothing and anything arranged in the scheme would not affect the revival of the original debt at the original rate of interest. Mr. Mukherji would have us hold that the determination of a debt by the manager is a judicial proceeding and his decision as to what the debt is amounts to a decree. But here the original and determined debts are exactly the same and so the point does not arise. I must hold that the plaintiff was entitled to exclude the period of management. It is certainly hard on the defendants that their debts should have been allowed to accumulate for so long a time as 19½ years; but it has to be remembered that through the protection of the Act the defendants' property has been preserved The plaintiff has also suffered in not being able to obtain repayment of the debt during so long a period.

The debt would be barred, even if the period of management were excluded, if the defendants had not in 1904 acknowledged their indebtedness. The Schedule to their application in 1904 cites and admits the debt. That application is signed and verified by both the defendants. Again when the debt was examined by the manager under section 8 the defendants both admitted it, and in his written statement defendant no. 1 acknowledged that he admitted the debt before the manager. These acknowledgments save the claim from the bar of limitation.

With regard to the passing of consideration the learned Subordinate Judge has I think correctly found that consideration passed. The defendant has brought no evidence to show that he gave hand-notes in favour of his relatives for the purpose of obtaining money from the manager. As to the liability of defendant no. 2, it is clearly shown, I think, that he joined with defendant no. 1 in conducting the

1926.

LALU MATHURA PRASAD SINGH v. LALU JAGESHWAR PRASAD SINGH.

litigation. Furthermore he joined with defendant no. 1 in presenting the application for protection and in that application admitted his joint indebtedness. Defendant no. 2 failed to prove that he was separate from defendant no. 1.

With regard to the legal necessity, defendant no. 1 himself says that there was litigation over Lot Chandu which continued for a long time. It is argued that there is no evidence that the plaintiff made enquiries as to the necessity of the loan; but it is clear that necessity was pressing, because the litigation was proceeding. I can see no reason to differ from the finding arrived at by the learned Subordinate Judge, and I would therefore dismiss the appeal with costs.

ADAMI, J.

KULWANT SAHAY, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Jwala Prasad and Bucknill, J.J.

SHAIKH ABDUL GAFFAR

v.

F. B. DOWNING.*

1925.

Nov., 19, 20, 23, 24, 25, 26. Dec., 18.

Patni Regulation, 1819 (*Bengal Regulation VIII of* 1819), *sections* 3, 5, 6 *and* 11—*Patni tenure, sale of, for arrears of rent—Non-registration of patnidar's name in landlords' sarishta, effect of—recorded tenant, liability of—Rent for more than one year, whether the first charge on the tenure—section* 11, *scope of—Representative, meaning of—Public Demands Recovery Act*, 1914 (*Bihar and Orissa Act IV of* 1914), *section* 46.

Under section 5 of the Bengal Patni Taluks Regulation, 1819, the zamindar is entitled, on an alienation of a patni taluk taking place, " to exact a fee upon every such alienation and he is also entitled to demand substantial security from the transferee or purchaser ". Section 6 empowers the

* Appeal from Original Decree no. 135 of 1922, from a decision of B. Suresh Chandra Sen, Subordinate Judge of Purnea, dated the 7th February, 1922.