

THE INDIAN LAW REPORTS PATNA SERIES.

APPELLATE CIVIL.

Before Harries, C.J. and Agarwala, J.

SHAIKH REYASAT

v.

GOPI NATH MISSIR.*

1938.

November,
21, 22.

Bihar Tenancy Act, 1885 (Act VIII of 1885), Schedule III, article 2(b) (ii), whether retrospective—suit for produce rent instituted after the amending Act came into force, whether would be governed by shorter period of limitation—Bihar Tenancy (Amendment) Act, 1934 (B. and O. Act VIII of 1934).

There is a difference between a case where a statute amending the law of limitation comes into force immediately and a case where a period of time is given between the passing of the Act and the date upon which it comes into force during which suits could be brought which would otherwise be barred by the amending Act.

Where, in an Act amending and shortening a period of limitation, a period of time is given between the passing of the Act and the date upon which it is intended that it should come into force, such an Act must be given a retrospective effect.

*Appeal from Appellate Decree no. 906 of 1936, from a decision of Nidheshwar Chandra Chandra, Esq., Additional District Judge of Gaya, dated the 26th August, 1936, affirming a decision of Babu Ramjivan Sinha, Munsif, Gaya, dated the 17th April, 1936.

1938.

SHAIKH
KEYASAT
vs.
GOPI
NATH
MISSIR.

Therefore, the shorter period of limitation of one year as embodied in the new Bihar Tenancy Act is applicable to a suit for produce rent, the cause of action for which had accrued before the passing of the amending Act, and which is instituted after the 10th of June, 1935, when the new Act came into force.

Rameshwar Prasad Singh v. Manger Kahar(1) *Manjhoori Bibi v. Akel Mahumed*(2), *Queen v. The Leeds and Bradford Railway Company*(3) and *Gopeshwar Pal v. Jiban Chandra Chandra*(4), followed.

Badri Narayan Singh v. Ganga Singh(5), not followed.

Soni Ram v. Kanhaiya Lal(6), relied on.

Maharaj Kumar Chote Lal Nandkishore Nath Shah Deo v. Tula Singh(7), distinguished.

Per AGARWALA, J.—The law of limitation being a branch of the adjectival law, the statute of limitation applicable to a particular suit or legal remedy is that which is in force at the date when the suit is instituted or the remedy is sought and not the statute which was in force at the time of the transaction or vesting of the cause of action on which the suit or remedy is based.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Harries, C. J.

The case was first heard by Wort, A. C. J., who referred it to a Division Bench.

Syed Naqui Imam (with him *Majibur Rahman* and *S. M. Siddique*), for the appellants.

Sarjoo Prasad, for the respondents.

HARRIES, C.J.—This is a defendants' second appeal against concurrent decrees of the Courts below

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- (1) (1956) 18 Pat. L. T. 193.
 (2) (1913) 17 Cal. W. N. 869.
 (3) (1852) 21 L. J. (N. S.) M. C. 193.
 (4) (1914) I. L. R. 41 Cal. 1125, S. B.
 (5) (1937) 18 Pat. L. T. 731.
 (6) (1913) I. L. R. 35 All. 227, P. C.
 (7) (1926) 8 Pat. L. T. 397.

decreeing the plaintiffs' claim for arrears of bhaoli rent due for the years 1339 to 1342 F.

It was contended, inter alia, on behalf of the defendants that the claim was barred by limitation. Both the lower Courts, however, came to the conclusion that the suit was not barred and accordingly decreed the plaintiffs' claim in full.

Before us it has been contended by the appellants that the claim for rent with respect to the years 1339 and 1340 F. is barred by time, though it is conceded that no such defence can apply to the claim for rent due for the years 1341 and 1342 F.

Previous to the year 1934 a landlord had three years in which to bring his suit. The matter was governed by section 184 and Schedule III, Article 2(b) (ii), Bihar Tenancy Act. In the year 1934 an amending Act was passed and this period of three years was reduced to one year. The time from which the period began to run was the same in both these Acts, namely, the last day of the agricultural year in which the arrear fell due. The amending Act of 1934 received the assent of the Governor-General on the 14th of November, 1934, and it was provided that it should come into force at such time as was provided by an order to be made under the provisions of the Act. By an order made under the Act this provision relating to limitation came into force on the 10th of June, 1935. It is clear, therefore, that all persons in this province were given a period from the 14th of November, 1934, to the 10th of June, 1935, to bring their suits, which, if not brought within that period, would be barred by the amending Act.

It has been argued by Mr. Naqui Imam on behalf of the defendant-appellants that this amending Act applied to all suits instituted after the 10th of June, 1935, whether the cause of action had accrued or not before that date. On behalf of the respondents it has been contended that this amending Act of 1934

1938.

 SHAIKH
 KHAYASAT
 v.
 GOPI
 NATH
 MISSIR.

 HARRIES,
 C. J.

1938

SHAIKH
KEYASATGOPI
NATH
MISSIR.HARRIES,
C. J.

cannot have the effect of taking away rights which had accrued before that Act came into force. This case came first before a single Judge, who has referred it to a Bench because there is a conflict of opinion concerning the matter in this Court.

In the case of *Rameshwar Prasad Singh v. Manger Kahar*(¹), Rowland, J., held that where a statute introduces a shorter period of limitation suits instituted after the amendment in respect of causes of action accruing before such amendment will be governed by the amending law, the rule ordinarily applicable being the law which is in force at the time of the institution of the suit, and this principle will apply especially where there is an interval of time between the passing of the new Act and its coming into force. Consequently the shorter period of limitation of one year will apply to a suit for produce rent the cause of action for which accrued before the passing of the 1934 Act amending the Bihar Tenancy Act. This is a case upon the statute with which we are now concerned. Rowland, J., stresses the fact that there was an interval of time between the passing of this amending Act and the date upon which it came into force.

In the case of *Badri Narayan Singh v. Ganga Singh*(²), another case on the effect of this amending Act, Courtney Terrell, C.J., came to a different conclusion. He held that a new law ought to be construed so as to interfere as little as possible with vested rights and a statute is, therefore, not to be construed with greater retrospective operation than its language rendered necessary. Accordingly he held that the shorter period of limitation of one year as embodied in the new Bihar Tenancy Act was not applicable to a suit for produce rent the cause of action for which had accrued before the passing of

(1) (1936) 18 Pat. L. T. 193.

(2) (1937) 18 Pat. L. T. 731.

the new amending Act. There can be no question whatsoever that this case is in direct conflict with the case decided by Rowland, J. It is clear, however, from Courtney Terrell, C. J.'s judgment that it was not present to his mind that there was an interval of time between the passing of the Bihar Tenancy (Amendment) Act of 1934 and the date upon which it came into force, namely, the 10th of June, 1935. At page 734 he observes :—

“Applying these principles of construction to the Bihar Tenancy Act and to the facts of this case, it becomes manifest that the period of limitation prescribed has not affected the vested right of the plaintiff who formally proceeded to sue in respect of the year 1340; and indeed upon general principles of justice this view has the further justification that by the time the Act was published, that is to say, on the 14th November, 1934, the period of limitation which the Judge has held to be applicable would have already expired, with the result that the plaintiff's right of action would have been destroyed without notice to him.”

In short, it is clear that the late learned Chief Justice was of opinion that the Amending Act of 1934 put an end to landlords' rights the moment it was passed, though clearly this was not so. In my judgment, this case of *Badri Narayan Singh v. Ganga Singh*(¹) is no authority on the facts of the present case, because the learned Chief Justice wrongly assumed that the Amending Tenancy Act came into force on the day upon which it was passed. The point under consideration was considered at considerable length in the case of *Manjhoori Bibi v. Akel Mahumed*(²). In that case the statute which amended the Law of Limitation came into force immediately. The learned Judges of the Calcutta High Court held

1933.

 SHAIKH
 KEXASAT
 v.
 GOPI
 NATH
 MISSIR.

 HARRIES,
 C. J.

(1) (1937) 18 Pat. L. T. 731.

(2) (1913) 17 Cal. W. N. 889.

1936.

SHAIKH
REYASAT
v.GOPI
NATH
MISSIR.HARRIES,
C. J.

that such a statute had no retrospective effect and could not affect rights which had become vested before it was enacted. Mookerjee, J., observed :

“ In my opinion, the cardinal and fundamental point in the case before me is that the Eastern Bengal and Assam Tenancy Amendment Act of 1908 came into operation the very moment it became law : consequently, if it were taken to affect pre-existing causes of action, the effect would be absolutely to bar at once all actions where the cause of action had accrued more than the limited time before the statute was passed.”

A little later in his judgment he observed :

“ On the other hand where a new statute of limitation reduces the time previously allowed for commencement of the suit, but does not come into operation forthwith and allows a reasonable time for the enforcement of existing causes of action, the Court will not hesitate to hold that the statute may affect causes of action already accrued in the same manner as those accruing after its passage.”

It is clear from these last observations that the learned Judge recognized that there was a great difference between a case where a statute amending the Law of Limitation came into force immediately and the case where a period of time was given between the passing of the Act and the date upon which it came into force during which suits could be brought which would otherwise be barred by the amending Act. This distinction has long been recognized in England and there appears to be no difference between the English Law and Indian Law upon this point.

In the case of *Queen v. The Leeds and Bradford Railway Company*⁽¹⁾ a Bench, consisting of Lord Campbell, C. J., Wightman, J., Erle, J. and Crompton, J., had to consider the point which is now

(1) (1852) 21 L. J. (N. S.) M. C. 108.

before us. A statute which did not come into operation until six weeks after the date upon which it was passed provided that where no time was limited for making complaints or laying informations under Acts of Parliament, such complaint should be made and such information should be laid within six calendar months from the time when the matter of such complaint or information arose. The Bench held that this Act had a retrospective operation and invalidated such an order where the complaint was not made within six calendar months from the time when the damage complained of occurred, although the act complained of was committed before the Act came into force. At page 195 Lord Campbell, C.J., observed :

There is no doubt that if the subject-matter of complaint in this case had arisen subsequently to the passing of the 11 and 12 Vict. c. 43, the provision contained in the 11th section would have applied. Then comes the question, whether the Act has a retrospective operation. If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the legislature not to give it a retrospective operation; but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal. Had the time allowed been six months, instead of six weeks, it could hardly have been said that the Act would not have applied to all cases happening before the Act was passed, and we cannot measure the intention of the legislature by the quantum of the time allowed. A certain time was allowed before the Act was to come into operation and that removes all difficulty."

Wightman, J., Erle, J. and Crompton, J. agreed with this view. It may be observed that this

1933.

SHAIKH,
KHYASATv.
GOPI
NATH
MISSTIR.HARRIES,
C. J.

1938.

SHAIKH
KUTASAT
v.
GOPI
NATH
MISIR.

HARRIES,
C. J.

case was overruled on another point in *Queen v. Edwards*(¹); but there can be no question that the statement of law relating to the effect of an amending statute remained unaffected. In this case the construction placed upon the statute though fatal to the enforcement of a vested right by shortening the time for enforcing it, did not in terms take away any such right. The Court appears to have thought that the general rule of construction against giving a statute a retrospective effect had only a limited application to cases such as the one before us.

The question of the effect of law amending period of limitation was also considered by their Lordships of the Privy Council in the case of *Soni Ram v. Kanhaiya Lal*(²). A suit was brought by the appellant on the 4th of March, 1907, against the respondents for the redemption of a mortgage, dated the 2nd of January, 1842, made between the respective predecessors in title of the parties and in which no date for redemption was specified. Acknowledgements of the mortgagor's right had been made by the widow and daughter of a former mortgagee, a predecessor in title of the respondents, which, the appellant contended, extended the period of limitation. Their Lordships held that the Law of Limitation applicable to the case was not Act XIV of 1859, the law in force at the date of the acknowledgements, but Act XV of 1877, which was in force at the time of the institution of the suit. This case is not precisely in point; but it is important because it recognizes that amendments of statutes dealing with limitation may well have a retrospective effect, though giving the statute such an effect would affect accrued rights.

The point before us was considered by a Special Bench of the Calcutta High Court in the case of *Gopeshwar Pal v. Jiban Chandra Chandra*(³). The

(1) (1884) 53 L. J. (N. S.) M. C. 149.

(2) (1913) I. L. R. 35 All. 227, P. C.

(3) (1914) I. L. R. 41 Cal. 1125, S. B.

Special Bench held that where the application of the provisions of an amending Act makes it impossible to exercise a vested right of suit, the Act should be construed as not being applicable to such cases. It was, however, recognized that where a period of time elapsed between the passing of the Act and the date upon which it came into force different considerations would arise. At page 1141 it is stated :—

“ Here the plaintiff at the time when the amending Act was passed had a vested right of suit, and we see nothing in the Act as amended that demands the construction that the plaintiff was thereby deprived of a right of suit vested in him at the date of the passing of the Amending Act. It is not (in our opinion) even a fair reading of section 184 and the third Schedule of the Bengal Tenancy Act, as amended, to hold that it was intended to impose an impossible condition under pain of the forfeiture of a vested right, and we can only construe the amendment as not applying to cases where its provisions cannot be obeyed. The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate. There are thus two positions; where in accordance with its provisions a suit could be brought after the passing of the amendment, it may be that the amendment would apply, but where it could not, then the amendment would have no application.”

In the present case a suit such as the present could well have been brought after the Amending Act was passed. In fact, landlords were given eight months in which to bring suits which would otherwise be barred by shortening the period of limitation.

On behalf of the respondents reliance is placed upon the case of *Maharaj Kumar Chote Lal Nandkishore Nath Shah Deo v. Tula Singh*⁽¹⁾ in which it

1938.

SHAIKH
KEYASAT
v.
GOPI
NATH
MISSIR.

HARRIES,
C. J.

(1) (1926) 8 Pat. L. T. 397.

1938.

SHAIKH
KEYASAT
v.
GOPI
NATH
MISSIR.

HARRIES,
C. J.

was held that section 139A of the Chota Nagpur Tenancy Act does not bar the institution of a suit by a tenant against his landlord for possession in a civil court where the cause of action has arisen before the introduction of the said section by the amending Act of 1920 and the result of applying the new provisions would be to deprive the plaintiff of his right of action altogether. This case is no authority for the respondents. In the course of the judgment there is nothing to suggest that the learned Judges considered the effect of a period of time being given between the passing of an amending Act and the date upon which it was to come into force. The Bench which decided this case, emphasised the rule that an Act should not be given a retrospective effect unless its terms are clear. Accrued rights must be protected unless it was clearly the intention of the legislature that such rights should be interfered with. There can be no doubt that such is a correct statement of the law; but where it is clear that the legislature intended to take away accrued rights, then such an effect must be given to the statute. In my view where, in an Act amending and shortening a period of limitation, a period of time is given between the passing of the Act and the date upon which it is intended that it should come into force, such an Act must be given a retrospective effect. The legislature have given all persons affected by the amending Act a period of time to bring their suits. If suits are not brought within such period, then the amending statute must be held to bar them. Such is the view held in English courts and such is the effect of authorities in courts in India.

For the reasons which I have given, I hold that the plaintiffs' claim in the case for rent due for 1339 and 1340 F. was barred by limitation. I would, therefore, allow this appeal in part and modify the decree of the Court below which must be a decree for rent due in 1341 and 1342 F. only. The damages must be calculated upon the rent due for those two years only. In all other respects the decree will

remain unaffected. Each party will bear its own costs of this appeal and of the proceedings in both the Courts below.

AGARWALA, J.—I agree. The law of limitation being a branch of the adjectival law, the statute of limitation applicable to a particular suit or legal remedy is that which is in force at the date when the suit is instituted or the remedy is sought and not the statute which was in force at the time of the transaction or vesting of the cause of action on which the suit or remedy is based. If authority is required for that proposition, it will be found in the decision of the Privy Council in *Soni Ram v. Kanhaiya Lal*(1). That was a suit instituted in 1907 for redemption of a mortgage. The plaintiff sought to meet the defence of limitation by setting up certain acknowledgements and relied on the fact that they had been given when the Limitation Act of 1859 was in force. The defendants, on the other hand, contended that the suit was governed by the Limitation Act of 1877. Their Lordships of the Privy Council affirmed the view of the High Court of Allahabad that the law of limitation applicable to a suit or proceeding is the law in force at the date of institution of the suit or proceeding, unless there is a distinct provision to the contrary. A difficulty suggests itself when, as in the present case, the period of limitation is shortened after the cause of action has arisen and before a suit on that cause has become barred under the unamended law. Such a case, which involved the construction of the statute with which we are concerned in the present appeal, came before the late Chief Justice sitting singly in *Badri Narayan Singh v. Ganga Singh*(2) in which his Lordship held that the longer period of limitation applied, that is to say, that the amendment with which we are concerned, is not retrospective. A different view was taken by

1938.

SHAIKH
KEYASAT

v.

GOPI
NATH
MISSIR.HARRIES,
C. J.

(1) (1913) I. L. R. 35 All. 227, P. C.

(2) (1937) 18 Pat. L. T. 731.

1938.

SHAIKH
REYASAT
v.
GOPI
NATH
MISSIL.AGARWALA,
J.

Rowland, J., in *Rameshwar Prasad Singh v. Manger Kahar*(1) where the distinction was referred to between a case where an amending Act comes into force on the day on which it is passed and a case where there is an interval of time between the date on which the Act is passed and the date on which it comes into operation. In the case which came before the late Chief Justice the opposite party was not represented and his Lordship appears not to have noticed that the amending Act did not come into operation immediately.

In *Gopeshwar Pal v. Jiban Chandra Chandra*(2) a Special Bench, considering an amendment of the period of limitation provided in the Bengal Tenancy Act, which came into force as soon as it was enacted, observed, at page 1141:—

“ The law as amended may regulate the procedure in suits in which the plaintiff could comply with its provisions, but cannot (in our opinion) govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate. There are thus two positions: where in accordance with its provisions a suit could be brought after the passing of the amendment, it may be that the amendment would apply, but where it could not, then the amendment would have no application.”

That appears to be in consonance with the law as stated in England by Lord Campbell, C. J., in *Queen v. The Leeds and Bradford Railway Company*(3). The facts of that case were that two Justices acting under 8 and 9 Vict. c. 18 had awarded a sum of money to one Edmondson as compensation for damage done to his land by the construction of the defendants' railway. The damage in respect of which the compensation had been awarded was done in 1846 and 1847. The complaint was made in 1850. In the

(1) (1936) 18 Pat. L. T. 193.

(2) (1914) I. L. R. 41 Cal. 1125, S. B.

(3) (1852) 21 L. J. (N. S.) M. C. 198.

meanwhile the statute 11 and 12 *Vict. c. 43* had been enacted, section 11 of which provides that where no time is limited for making complaints or laying informations under Acts of Parliament, such complaint shall be made and such information laid within six months from the time when the matter of such complaint or information arose. This statute did not come into operation until six weeks after it had been passed, that is to say, until the 2nd of October, 1848. The question, therefore, arose whether the six months' period of limitation prescribed by the latter Act operated to bar the claim made by Edmondson on the basis of the former Act. Lord Campbell, C.J. held that the Act was retrospective, in language which has been quoted in the judgment of my Lord the Chief Justice.

1938.

SHANKH
REFASAT
v.
GOVT
NATH
MISSIR.

AGARWALA,
J.

Appeal allowed in part.

S. A. K.

FULL BENCH.

Before Wort, Dharle and Manohar Lall, JJ.

SADANAND JHA

v.

AMAN KHAN.*

1938.

November,
4, 8, 9, 10
30.

Bihar Money-Lenders Act, 1938 (Bihar Act III of 1938), section 11, whether void—Government of India Act, 1935 (25 and 26 Geo. V, Ch. 42), sections 100 and 107.

Per Curiam:—The Provincial Legislature in enacting section 11 of the Bihar Money-Lenders Act, 1938, has also legislated with regard to the subject "contracts" of the Concurrent List, and, therefore this section, being repugnant to an "existing Indian law", is void under section 107(1) of the Government of India Act, 1935.

*Appeal from Appellate Decree no. 81 of 1937, from a decision of P. C. Chaudhuri, Esq., I.C.S., District Judge of Darbhanga, dated the 30th of June, 1936, modifying a decision of Babu Bijoy Krishna Sarkar, Munsif of Darbhanga, dated the 31st January, 1935.