

agreeing with the views expressed in those decisions, I hold that the offence under section 290, Indian Penal Code, has been established against the respondent.

I would accept the appeal, set aside the order of acquittal and, convicting the respondent under section 290, Indian Penal Code, sentence him to pay a fine of Rs. 100. In default he shall undergo one month's simple imprisonment.

FFORDE J.—I agree.

Per Curiam—The appeal is accepted, and the respondent is convicted and sentenced as above set forth.

A. N. C.

Appeal accepted.

LETTERS PATENT APPEAL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice LeRossignol.

KAURA AND ANOTHER (PLAINTIFFS), Appellants,
versus

RAM CHAND ETC. (DEPENDANTS), Respondents.

Letters Patent Appeal No. 217 of 1923.

Indian Limitation Act, IX of 1908, article 14—Suit for redemption of a mortgage brought more than one year after the Collector's order under the Redemption of Mortgages (Punjab) Act, II of 1913, adverse to plaintiffs—Limitation.

A Single Bench of the High Court held that the present suit for redemption of a mortgage of 1878 was barred under article 14 of the Limitation Act, as no suit had been brought within one year to set aside the order of the Collector under Punjab Act II of 1913, holding that the mortgage had ceased to exist and redemption was barred.

Held, that what has to be regarded is the true effect of the suit, not its formal or verbal description, and applying this principle, the suit referred to in section 12 of Punjab Act II of 1913, as “ a suit to establish his rights in respect of the

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"mortgage" is a suit to set aside an order of the Collector, to which article 14 of the Indian Limitation Act applies.

Phul Kumari v. Ghanshyam, Misra (1), referred to.

The cause of action for such a suit is not the original contract, but the order of the Collector which aggrieves the party suing.

A person who takes advantage of a summary procedure must suffer its disadvantages as well as enjoy its benefits.

Hargopal, for the Appellants—The Legislature could hardly have intended to attach finality to such a summary inquiry as is prescribed under the Redemption of Mortgages (Punjab) Act, II of 1913. See *Naboghan Badhai v. Raghu Nath* (2) and *Shivajiyesji v. Collector of Ratnagiri* (3), where article 14 of the Limitation Act was not applied to orders passed by officers of the Government. Again there is no analogy between a suit under order XXI, rule 63, Civil Procedure Code, and a suit under section 12 of the Punjab Act. Besides there is a specific provision in the Limitation Act for a suit under XXI, rule 63, Civil Procedure Code, *i.e.*, article 11, while there is no such specific provision in that Act for a suit under section 12 of the Punjab Act II of 1913. Again article 14 does not apply as it provides the period of limitation "for setting aside an order of an officer of the Government", while the suit contemplated by section 12 is "a suit to establish his rights in respect of the mortgage". It is a great hardship on the mortgagor that his period of redemption should be cut down to one year—see the opinion of Mr. Rustomji on page 44 of his Supplement to Rustomji's Limitation Act, 3rd Edition, where the learned author has doubted the correctness of the judgment under appeal.

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(1) (1907) I. L. R. 35 Cal. 202 (P. C.). (2) (1915) 30 I. C. 61.

(3) (1886) I. L. R. 11 Bom. 429.

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M. L. Puri (with him Amar Nath Chona and S. R. Laul) for the Respondents—When an order passed under a special Act is declared by that Act to be “conclusive”, the order is binding and cannot be questioned as long as it is not set aside in accordance with the procedure laid down in that Act. Such suit, however, must be instituted within one year of the date of the order under article 14, Limitation Act, *vide Nawab Gholam Mahbub Subhani v. Prem Narain* (1), *Parbati Nath Dutt v. Rajmohun Dutt* (2), *Subbanna v. Secretary of State* (3), *Chhotubhai Govindji v. Secretary of State* (4), *Raghunath Prasad v. Kaniz Rasul* (5), *Nagu v. Salu* (6), and *Ashutosh Nath Ray v. Abdool* (7). Section 12 lays down that the order of the Collector shall be conclusive subject to the result of the suit which may be brought by any party aggrieved by the order. The findings of the Collector, therefore, unless set aside are final and operate as *res judicata* in suits brought subsequently, *vide Nuthirulandi v. Sethurama Aiyar* (8). As the present suit seeks to challenge or avoid the findings of the Collector, *i.e.*, to set aside his order, it is barred under article 14.

Section 12 of the Punjab Act embodies a rule of law analogous to that contained in order XXI, rule 63, Civil Procedure Code, *vide Balwant Rai v. Gheru* (9). The procedure prescribed in the Civil Procedure Code referring to claims to attach property is purely permissive and a person is not bound to take advantage of the summary procedure prescribed by order XXI

(1) 25 P. R. 1893.

(2) (1901) I. L. R. 29 Cal. 367.

(3) (1915) 31 I. C. 267.

(4) (1919) 55 I. C. 591.

(5) (1902) I. L. R. 24 All. 467.

(6) (1890) I. L. R. 15 Bom. 424.

(7) (1901) I. L. R. 28 Cal. 676.

(8) (1919) 50 I. C. 43.

(9) 85 P. R. 1917, p. 339.

and he can bring his suit within the ordinary period of limitation, but if he prefers an objection and fails therein, he is bound to bring that suit within one year of the failure, *vide*, *Gopal Singh v. Ganpat Rai* (1), and *Venkataratnam v. Ranganyakamma* (2).

Similarly, the summary procedure prescribed under Punjab Act II of 1913 is permissive and a mortgagor is not bound to resort to it. But if he avails himself of the summary procedure and is aggrieved by the order he must bring his suit within one year. The suit referred to in section 12 is no doubt "a suit to establish his rights in respect of the mortgage" while the suit mentioned in article 14 is "a suit to set aside an order", but the Courts have to look to the true purport of the suit and not merely to the form in which it may be clothed or disguised. The true nature of such a suit is not changed by asking the Court for the very relief which the Collector had refused, instead of asking the Court to set aside the order of the Collector holding him not entitled to that relief, *vide*, *Phul Kumari v. Ghanshyam Misra* (3).

Hargopal, replied.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Moti Sagar, dated the 16th June 1923.

The judgment of Moti Sagar, J., dated 16th June 1923, under appeal. MOTI SAGAR J.

This appeal arises out of a suit for redemption of certain lands attached to Mehngawala well in *Mauza Bhakkar* in the Mianwali District. The property in suit consists of two plots of land, one mortgaged in 1827 by means of a written document but alleged to have been subsequently redeemed and re-mortgaged orally in 1878, and the other said to have been

(1) 66 P. R. 1916.

(2) (1918) I. L. R. 41 Mad. 985 (F. B.).

(3) (1907) I. L. R. 35 Cal. 202, 206 (P. C.).

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mortgaged in the year 1903. There is no dispute now in respect of the mortgage of 12 *kanals*, 6 *marlas* of land made in 1903, and it is admitted before me that the suit for redemption so far as this later mortgage is concerned is within time. The dispute only relates to the first mortgage of 1827, and the contention of the defendants is that the suit with regard to the redemption of this mortgage is barred by limitation. It is contended that the mortgage is more than 60 years old and that the plaintiff has no subsisting rights of redemption in respect of the land covered by this mortgage. The entries in the Settlement records of 1878 on which reliance is placed by the plaintiff, it is urged, do not mean that the original mortgage of 1827 came to an end and that a new contract creating a fresh mortgage was substituted in its place in 1878. It is stated that the original mortgage remained intact, but that at about the time of the settlement only certain modifications were introduced in its terms which did not, however, in any way affect the existence of the previous contract itself. It is further contended that in 1913 the predecessor in title of the present plaintiff made an application to the Collector for the redemption of this mortgage under the Redemption of Mortgages Act (II of 1913), but that this application was dismissed on the ground that the mortgage was more than 60 years old and that the claim as to its redemption was barred by limitation. It is urged that as no suit was brought by the predecessor-in-title of the plaintiff within one year from the date of that order to establish his rights in respect of the mortgage, the present suit is barred under Article 14 of the Indian Limitation Act. Both the Courts below have found in favour of the plaintiff and have decreed the suit in its entirety with costs in both Courts against the defendants. The latter have now come up in second appeal to this Court through Mr. Jagan Nath and I have heard Mr. Hargopal on behalf of the respondents.

Mr. Jagan Nath's first contention is that the finding of the learned Judge of the Court below on the question of limitation is erroneous, and that the settlement entries of 1878 have been entirely misinterpreted by him. In my opinion this contention has no force and must be overruled. It has not been shown in what way the entries have been misinterpreted, and a reference to those entries clearly shows that the

mortgage of 1878 was an entirely new transaction and not a mere continuation of the previous mortgage of 1827 with certain terms here and there modified. I see no reason to differ from the opinion of the learned District Judge on this point and hold that the suit in respect of this mortgage is within time. I am also of opinion that the finding of the learned District Judge that the previous mortgage of 1827 did not remain subsisting and that a fresh mortgage was created some time between 1861 and 1878 is clearly a finding of fact which cannot be disturbed in second appeal.

The next question to be considered is what is the effect of the proceedings taken under the Redemption of Mortgages Act in 1913 on this suit. It appears that on the 11th of July 1913 Allah Bakhsh the predecessor-in-title of the present plaintiff made an application under Act II of 1913 to the Collector claiming redemption of the land in suit on payment of Rs. 45. Notice was issued to the mortgagees to show cause why redemption should not be effected, and on their objecting that the mortgage was made more than 86 years ago and that the applicant did not possess any subsisting rights of redemption therein, an inquiry was ordered into the age of the mortgage in dispute. The Collector eventually came to the conclusion that the mortgage was made in *Sambat* 1884 and that, therefore, the claim as to its redemption was barred by limitation. He accordingly dismissed the petition and directed the applicant to seek his remedy in a civil Court, if so advised. This application was presumably rejected under section 9 of Act II of 1913. Now, section 12 of that Act lays down that "any party aggrieved by an order made under sections 6, 7, 8, 9, 10 and 11 of this Act, may institute a suit to establish his rights in respect of the mortgage, but, subject to the result of such suit, if any, the order shall be conclusive." This section embodies a rule of law similar to that which is contained in rule 63 of Order XXI of the Civil Procedure Code. Under rule 63 of Order XXI of the Civil Procedure Code the person who is aggrieved by an order passed against him is entitled to bring a declaratory suit to establish the rights which he claims to the property in dispute within one year from the date of such order, and if no such suit is brought within the period prescribed by law, the order of the Court allowing or disallowing the objec-

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tion becomes conclusive. In the present case no suit was brought by the mortgagor or his representative-in-interest within one year from the date of the adverse order passed against him, and it is consequently contended that this suit, which is practically one for setting aside that order, is barred under Article 14 of the Indian Limitation Act. Articles 11, 11-A, 12 and 13 of the Indian Limitation Act provide a period of limitation for suits of a specific nature brought under the Code of Civil Procedure, and Article 14 is a general residuary Article intended to provide a period of limitation for all suits which do not fall within the purview of any of those Articles. The present suit is clearly one for setting aside an order of the Collector passed in his official capacity for which no express provision is made in the Indian Limitation Act, and I do not see how it can be argued that the suit is outside the scope of Article 14. The learned District Judge is of opinion that as no period of limitation for a suit of this nature is fixed in section 12 of the Redemption of Mortgages Act, Article 14 does not apply. I am unable to agree with this view. Section 12 of the Redemption of Mortgages Act merely points out the results which would ensue if the procedure laid down in that section is not followed. In order to ascertain the period of limitation for such a suit it is necessary that reference should be made to the provisions of the Indian Limitation Act, and the only Article in that Act under which the suit could fall is Article 14 which provides a period of one year's limitation from the date the order complained against is passed.

Next it is argued that this is not a suit for setting aside the order passed by the Collector but a suit for redemption, pure and simple, and that therefore Article 14 has no application to such a suit. I do not think that there is any force in this contention. Before redemption of the mortgage in suit can be effected it is necessary that the order passed by the Collector in 1913 should be set aside, and the plaintiff cannot evade the provisions of Article 14 by merely saying that he does not expressly ask for the setting aside of the order. The Collector after due inquiry decided against the claim of the plaintiff's predecessor-in-title, and the plaintiff is, by reason of the latter being a party to the proceedings before the Collector, bound by the order, and it is necessary for him

under section 12 of Act II of 1913 to get rid of that order before he can establish his right to redeem the property.

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Lastly, it is argued that proceedings under Act II of 1913 are summary in their nature and that the Act is not intended to curtail the period of limitation for a suit for redemption which a litigant ordinarily possesses under the Indian Limitation Act. No doubt this is so, but this argument entirely loses sight of section 12 of the Act under which the order is likely to become conclusive, if not duly contested by means of a suit. In my opinion the order of the learned District Judge is wrong, and the suit is clearly barred by Article 14 of the Indian Limitation Act so far as the earlier mortgage of 1827 is concerned.

The result is that I accept the appeal and, in modification of the order of the lower appellate Court, grant plaintiff a decree for possession by redemption of 12 *kanals* 6 *marlas* of land incorporated in mutation No. 1509, dated the 31st of August 1903 on payment of Rs. 43 only. The rest of the plaintiff's claim shall stand dismissed. Parties shall bear their own costs throughout.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This Letters Patent Appeal arises out of a suit to redeem two mortgages, one granted in 1827, the other in 1903. The suit has been decreed in respect of the mortgage of 1903 and with it we have no concern. With regard to the mortgage of 1827 the suit has been dismissed, on the ground that it is barred by time, and it is from that portion of the judgment only that this Letters Patent Appeal has been preferred.

Now, the facts found are that in 1913 the predecessor-in-title of the present appellant made an application to the Collector under the Redemption of Mortgages Act (Punjab Act No. II of 1913) for redemption of this mortgage, but the application was

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dismissed on the ground that the mortgage had ceased to exist and redemption was barred. Inasmuch as no suit to set aside that order of the Collector was brought within one year of its date the learned Judge holds that the present suit to redeem is barred under Article 14 of the Indian Limitation Act, although, contrary to the Collector, he finds that the mortgage of 1827 was replaced by a fresh mortgage in 1878, *i.e.*, less than 60 years before suit. Consequently the question which we have to decide is whether a mortgagor's right to redeem, which would otherwise be within limitation, is barred if the action is brought later than a year of the date of an order passed to the plaintiff's detriment by the Collector on an application under Punjab Act No. II of 1913.

Now, Act II of 1913 is a special Act providing a summary procedure for the redemption of certain mortgages of land in the Punjab. It is a miniature Code in itself. It provides for enquiry by the Collector who is empowered to transfer possession from the mortgagee to the mortgagor. Provision is also made for the setting aside of *ex parte* orders and orders of dismissal. Finally, section 12 provides expressly that the Collector's order shall be conclusive subject to the result of a suit which any party aggrieved by an order made under the Act may institute to establish his rights in respect of the mortgage. Many authorities have been cited to us at the Bar to establish the proposition that when an order passed under a special Act is declared by that Act to be conclusive, it cannot be ignored and no relief is open to the aggrieved party unless that order be set aside. On that point we require no authority, for the Act itself is quite clear on the subject. In our view the crux of the case lies in the words "a suit to establish his rights in respect of the mortgage" and whether such a suit is one which

falls within Article 14 of the Indian Limitation Act which runs as follows :—

“ To set aside any order of an officer of Government in his official capacity, not herein otherwise expressly provided for. ”

It has been argued that a suit does not fall under any given Article of the Limitation Act unless it corresponds to the exact verbal description of the cause as given in the Article, and in this case the argument on behalf of the appellant before us has been that the suit referred to in section 12 of Act II of 1913 is “ a suit to establish his rights in respect of the mortgage ”, whereas Article 14 of the Limitation Act refers to “ a suit to set aside any order of an officer of Government.” It is noteworthy that the expression “ a suit to establish his right ” as used in the Civil Procedure Code does describe the relief open to any person who considers himself aggrieved by orders passed in execution proceedings, *cf.* order XXI, rules 63 and 103, and the limitation for such suits is provided in Articles 11 and 11-A of the Limitation Act. A suit under Article 11 would normally be a suit for a declaration, and a suit under Article 11-A would normally be a suit for possession. Similarly, the relief claimed in a suit under Article 14, apparently would vary according to the terms of the Collector's order impeached. For these reasons it would appear to us that the phrase used in section 12 of the Act “ a suit to establish his rights in respect of the mortgage ” was borrowed from the Code and does not bear the narrow meaning attributed to it by the appellant.

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Now, a litigant merely by attaching a label to his suit cannot bring it under a different Article of the Limitation Act from that under which it would come on a true interpretation of the nature of the suit.

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In *Phul Kumari v. Ghanshyam Misra* (1), it was pointed out that what has to be regarded is the true effect of the suit, not its formal or verbal description. In that case it was held that the suit was one brought by a party against an order under section 282 of the Code to establish the right which he claimed and such a suit was held by their Lordships to fall within that Article of the Court-fees Act which ran as follows :—
 “ To alter or set aside a summary decision or order of a Civil Court. ”

Applying those principles to the case before us we find that the suit referred to in section 12 of the Act is a suit to set aside an order of the Collector. From the very wording of that section it is clear that the cause of action for such a suit is not the original contract but the order of the Collector which aggrieves the party suing. It is a suit to establish the erroneous nature of the order.

On general considerations also we cannot believe that it was the intention of the Legislature that a dispute which had been focussed and decided by the proceedings before the Collector should remain in suspense for a period which might extend to another 60 years. It has also been objected that this interpretation operates to reduce the normal period of limitation; but when a dispute has been established we do not think that that in itself is an unfortunate circumstance. However, that may be, an individual who takes advantage of a summary procedure must suffer its disadvantages as well as enjoy its benefits. To refer again to the summary procedure provided by the Code in Order XXI we find there the same results. A person who does not take advantage of the summary procedure may bring a suit within the ordinary period of limitation; but if he does take advantage

(1) (1907 I. L. R. 35 Cal. 202 (P. C.).

of the summary procedure he must, if unsuccessful, bring his suit to establish his rights within the comparatively short period of one year from the date of the order.

Another objection raised is that there may be cases of hardship where the mortgagor applies to the Collector to redeem on payment of a certain sum and finds himself confronted with the decision by the Collector that the sum due is a much larger sum far beyond the mortgagor's ability to pay. We are not impressed by this objection, for if the mortgagor instead of applying to the Collector for a decision had had recourse to a suit he would have been forced to find the sum decreed on pain of losing his property altogether.

Our conclusion then is that the real nature of the suit contemplated by the Legislature in section 12 of Act II of 1913 is a suit to set aside the Collector's order. That order unless it be set aside is conclusive and as in the case before us that order was not set aside within the period of limitation provided, the present suit to redeem the mortgage is out of time.

For the foregoing reasons we dismiss this appeal with costs.

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Appeal dismissed.

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