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to hold the land for five years, and the tenant being dispossessed in the middle of the first year by a trespasser does not bring his suit until after six months. According to the argument of the other side, he cannot recover, though there is still a subsisting tenancy right in him. Would the dismissal of his suit exonerate him from the liability to pay rent to his landlord? I doubt whether he would be so exonerated.

No doubt the fact that the Legislature has not provided in the Bengal Tenancy Act any period of limitation for the case of a non-occupancy raiyat is rather remarkable, and it is anomalous, as pointed out by me in *Ramdhan Bhadra v. Ram Kumar Dey* (1) that a longer period of limitation should be applicable to such a case than in the case of an occupancy raiyat. But we cannot guide ourselves by such considerations. We have to administer the law as it is.

For these reasons I agree with my Lord in holding that the first question should be answered in the negative, and, so far as the second question is concerned, the limitation I should say is either six or twelve years as provided in the Indian Limitation Act. In either view this suit is within time.

HARINGTON, J. I have read the judgment, which has been delivered by Mr. Justice Ghose, and I agree in that judgment.

BRETT, J. I also agree in the judgment of Mr. Justice Ghose, and agree that the question referred should be answered in the manner stated by the learned Chief Justice.

MACLEAN, C. J. The result is that the appeal must be allowed and the case must go back to the Subordinate Judge to be tried on the merits.

The appellant is entitled to his costs in this Court, including the costs of this reference.

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[658] APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Harington.

KRISHNA KAMINI DEBI *v.* DINO MONY CHOWDHURANI.*
[29th March, 1904.]

Transfer of property Act (Act IV of 1882) s. 52—Lispendens—Contentious suit—Suit for partition—Admission of share in plaint—Transfer after filing of plaint—Objection to share in written statement.

A instituted a suit against B and other co-sharers, for partition, admitting that B had a share in the property. Afterwards C purchased the share, which B claimed to have held. Some of the defendants, who were co-sharers of the property under partition, then put in written statements in which they denied that B had any share.

A preliminary decree was passed by the Court specifying the shares of the several proprietors and declaring that B had no share at all. B did not enter appearance in these proceedings. After the decree declaring the shares of the proprietors had been passed, C applied to be made a party to that suit, but her application was rejected. B appealed against the preliminary decree, but his appeal was dismissed.

Upon a suit by C for possession of the share purchased by her from B, the defence mainly was that the suit was barred by reason of s. 52 of the Transfer of Property Act.

* Appeal from Appellate Decree Nos. 1654 and 1655 of 1901, against the decrees of Dwarkanath Mitter, Additional Judge of Mymensingh, dated the 11th of May 1901 affirming the decree of Rajendra Kumar Bose, Subordinate Judge of that District, dated the 10th September 1900.

(1) (1890) I. L. R. 17 Cal. 926.

Held, that the suit was not so barred. The suit did not become contentious, until the written statement was put in by the opposing defendants disputing any right, title or interest of B in the property under partition, as, in the plaint in the partition suit, it was admitted that he had a share in the property under partition; and that having regard to the fact that C, the transferee, was not allowed to become a party to that suit, she could not properly be regarded as prejudiced by the result.

Jogendra Chunder Ghose v. Ful Kumari Dassi (1) distinguished.

[Ref. 31 Bom. 398=9 Bom. L. R. 530; 31 Cal. 745; 11 I. C. 404=15 C. L. J. 137. Not foll. 88 Mad. 450; 1913 M. W. N. 672. Dist. 11 N. L. R. 21=27 I. C. 940]

SECOND APPEAL by defendants Nos. 1 and 2 Sreemutty Krishna Kamini Debi and another.

[669] This appeal arose out of an action brought by the plaintiff to recover possession of certain immoveable property. The allegation of the plaintiff was that the disputed property, $\frac{1}{8}$ th share of Mouzah Singtia, originally belonged to one Kali Nath, which on his death devolved upon his two widows. In execution of a money decree against the widows, the property was sold and was purchased by Rash Govind Biswas, father of defendants Nos. 12 to 16, on the 4th June 1855, both on his behalf and also on behalf of his younger brother, Mahesh Govind Biswas, defendant No. 11. Subsequently in execution of a money decree obtained by the Loan office of Tangail against Mahesh Govind Biswas, one-half of the $\frac{1}{8}$ th share of the disputed property was sold and was purchased by the plaintiff on the 10th February 1893. The sale was confirmed on the 14th April 1893 and formal possession was taken by the plaintiff on the 2nd September 1893. The other moiety of the $\frac{1}{8}$ th share was sold to the plaintiff by Mahesh Govind's son by a *kobala* dated 6th July 1893. A suit for partition of Mouzah Singtia was brought by the defendant No. 8, who admitted in his plaint that the Biswas defendants (Nos. 11 to 16) were owners of $\frac{1}{8}$ th share of the said Mouzah and made them parties to the suit. The Biswas defendants did not enter appearance. On the 6th July 1893 defendants Nos. 3, 4 and 5, who were co-sharers to the property under partition, put in a written statement, in which they denied that Biswas defendants had any share. On the 16th February 1894 a preliminary decree was passed by the Court specifying the shares of the several co-sharers and declaring that the Biswas defendants had no share at all. On the 14th March 1894 the plaintiff applied to be made a party to the partition suit, but her application was refused. Against the preliminary decree the Biswas defendants appealed, but their appeal was dismissed by the District Judge on the 9th August 1894. The present suit was brought by the plaintiff for possession of the share of the property purchased by her in execution of the decree and also by private sale from the Biswas defendants.

The defence was that the plaintiff's predecessor in title had no title in the disputed property and that the plaintiff having purchased the disputed property during the active prosecution [660] of the partition suit, the transfer could not affect the right of the co-sharers of the property. The Court of First Instance decreed the plaintiff's suit holding that, notwithstanding the decree in the partition suit the Biswas defendants had $\frac{1}{8}$ th share, which passed to the plaintiff. On appeal to the District Judge of Mymensingh, the decision of the First Court was affirmed.

(1) (1899) I. L. R. 27 Cal. 77.

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Babu *Nil Madhab Bose* (with him Babu *Shib Chunder Palit*) for the appellant.

Babu *Srinath Das* (with him Babu *Basanto Kumar Bose* and Babu *Dwarka Nath Chakravarti*) for the respondent.

PRINSEP, J. A suit for partition was brought by Jagat Chander Munshi, predecessor of defendants 8 and 9, in which the other co-sharers were made defendants, and in the plaint the plaintiff admitted that the Biswas defendants had a share in the property.

At an execution sale, a $\frac{1}{12}$ th share, being one-half of what the Biswas defendants claimed to have held, was sold on the 10th February 1893 and was bought by the plaintiff who, at a private sale, purchased also the remaining portion of the share on the 6th July of the same year.

On the 19th July the defendants Nos. 3, 4 and 5, who were co-sharers of the property under partition, put in a written statement, in which they denied that the Biswas defendants had any share.

On the 16th February 1894, what is termed a preliminary decree was passed by the Court specifying the shares of the several proprietors of this property and declaring that the Biswas defendants had no share at all. It seems that in these proceedings the Biswas defendants never entered appearance. We cannot learn from the learned pleaders engaged before us whether the suit proceeded further to a partition by metes and bounds. We understand that by the use of the terms "preliminary decree defining the shares," the object of the suit was to obtain a complete partition.

[661] On the 14th March 1894, that is, shortly after the decree declaring the shares of the several owners of this property had been passed, the plaintiff applied to be made a party to that suit and her application was refused. Against what is termed the preliminary decree the Biswas defendants appealed, but their appeal was dismissed by the District Judge on the 9th August 1894. The plaintiff now sues for possession of the share purchased by her in execution of the decree and also by private sale from the Biswas defendants and it has been found by both Courts that, notwithstanding the decree in the partition suit, the Biswas defendants had a $\frac{1}{12}$ th share, which has passed to the plaintiff.

The only objection raised before us in second appeal is that the suit is barred by reason of the proceedings in the partition suit, inasmuch as, under s. 52 of the Transfer of Property Act, the transfer being made during the active prosecution of a contentious suit, in which the right to the immoveable property was directly and specifically in question, could not affect the rights of the other co-sharers therein.

The first question that arises is how far the proceedings in that suit can be regarded as contentious so as to affect the transfers made to the plaintiff. The first transfer was, as has been held by the Lower Court, on the 10th February 1893 at an execution sale before the institution of the partition suit, but it is contended that, inasmuch as this sale was not confirmed until a later date, that is, until the 14th of April after the institution of the partition suit, there was no valid transfer and, therefore, the transaction comes within the terms of s. 52. The title to property sold in execution of a decree vests in the purchaser from the date of his receiving a certificate from the Court after the sale has become absolute and not before. (S. 316 of the Code of Civil Procedure.)

The second transfer by private sale no doubt took place after the institution of the partition suit.

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It is contended on behalf of the plaintiff that there was then no contentious suit before the Court. The case then before the Court was on a plaint, in which the title of the Biswas was admitted and it was not contentious, until the return statements of the objecting defendants had been filed, when only it became contentious. On the other hand, it is stated by the learned [662] pleader for the appellants that of necessity a suit for partition must be contentious and that consequently sec. 52 of the Transfer of Property Act would apply to any transfer made after the plaint had been filed. The case of *Jogendra Chander Ghosh v. Fulkumari Dassi* (1) has been referred to as containing a definition by the learned Judges of the meaning of a contentious suit. That case is not in point, because the plaint as shown by the learned Judges itself indicated that the suit would be contentious as its object was to have determined a specific share, which was doubtful and in dispute. The expression, we find, is also defined by s. 253A of the Indian Succession Act (X of 1865) as amended by Act VI of 1881, sec. 7 in respect of proceedings for grant of probate or letters of administration and we think that that definition may be usefully applied to the present case. The explanation declares that by contention is understood "the appearance of any one in person or by his recognized agent or by a pleader duly appointed to act on his behalf to oppose the proceedings." In this view it seems to me that the suit did not become contentious, until the written statement was put in by the opposing defendants disputing any right, title, or interest of the Biswas defendants in the property under partition as in the plaint they were described as parties to the partition as co-sharers, and I further think that, having regard to the fact the plaintiff, the transferee, was not allowed to become a party to that suit, she cannot properly be regarded as prejudiced by the result.

In my opinion, the suit is not barred by reason of s. 52 of the Transfer of Property Act.

The plaintiff was no party to the partition suit and was even not allowed by the Court to become a party to it, although she had succeeded to whatever right, title or interest was with the Biswas defendants, who were parties, and consequently her rights are not affected by the proceedings in the partition suit.

Both appeals are accordingly dismissed with costs.

HARINGTON, J. I agree that the appeals must be dismissed. By s. 52 of the Transfer of Property Act it is provided that [663] "during the active prosecution in any Court of a contentious suit or proceeding in which any right to immoveable property is directly and substantially in issue, the property in question cannot be transferred so as to affect the right of any other party thereto under decree or order, which may be made therein."

In the present case the property was transferred after a suit for partition in respect of it had been commenced, but the plaintiff in that suit admitted the defendant transferors' right on partition, to the share which the present plaintiff now claims.

There was at the time of the transfer no contention between these

(1) (1899) I. L. R. 27 Cal. 77.

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parties to the suit and in fact there never was any contention between the plaintiff and the defendant transferors in that suit.

That being the case I do not think the claim of the present plaintiff is affected by the order in the partition suit made against their then transferors in favour of co-defendants, who had made no claim against the transferors, until after the transfer.

In the case of *Bellamy v. Sabine* (1) Lord Justice Turner points out the difficulties there are in the application of the doctrine of *lis pendens* as between co-defendants and pertinently asks when the *lis pendens* between them is to commence.

Whatever may be the answer to that question I think it is clear that the *lis pendens* cannot be said to commence, until the co-defendant has by his pleading contested the rights of the other defendant.

Appeal dismissed.

31 C. 664 (=1 Cr. L. J. 525.)

[664] CRIMINAL APPEAL.

Before Mr. Justice Pratt and Mr. Justice Handley.

EMPEROR v. ARJAN PRAMANIK.*

[27th April, 1904.]

Sanction—Complaint—Assault—Public servant—Resistance to authority of Public Servant—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Indian Penal Code (Act XLV of 1860) ss. 183, 352.

A Munsif of Pabna held an inquiry under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed various offences under the Penal Code in connection with certain execution proceedings in his Court sent the case for trial to the District Magistrate, who in turn transferred the case to a Deputy Magistrate for disposal.

The accused were tried under ss. 183 and 352 of the Penal Code.

The Deputy Magistrate, without considering the case on its merits, acquitted the accused on the ground that there was no sanction as required by law for the prosecution of the accused.

On appeal by the Local Government against the acquittal,

Held with regard to the charge under s. 183 of the Penal Code that as the Munsif had acted under s. 476 of the Criminal Procedure Code, it was incumbent on the Deputy Magistrate under cl. (2) of that section to proceed with the case according to law.

Held also that the charge under s. 352 of the Penal Code required no sanction.

Ishri Prasad v. Sham Lall (2), referred to.

[Ref. 40 Cal. 477=17 C. L. J. 245=17 C. W. N. 647=14 Cr. L. J. 197=19 I. C. 197.]

IN execution of a decree obtained from the Court of the Second Munsif of Pabna, by Shome Biswas against the accused Arjan Pramanik and Nirjan Pramanik some moveable property belonging to the accused was attached by the Civil Court peon and placed by him in the custody of the decree-holder. The accused however with the aid of a number of persons forcibly recovered the property, and assaulted the decree-holder. The peon reported the occurrence to the Munsif, who, on the 8th August 1903 held an inquiry [665] under s. 476 of the Criminal Procedure Code, and having come to the conclusion that the accused had committed offences under ss. 183, 186, 352 and 353 of the Penal

* Criminal Appeal No. 4 of 1904, made against the order passed by Suresh Chandra Das, Deputy Magistrate of Pabna, dated the 3rd November, 1903.

(1) (1857) 1 De G. & Jones, 566.

(2) (1885) I. L. R. 7 All. 871.