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Judge, we think that he has sufficiently discriminated between the two points, namely, the question of limitation and the question of due service, and there is in fact no real confusion in his judgment on this point.

The finding with reference to the service of notice is a finding of fact, which we are unable to interfere with in second appeal; and as that finding is conclusive so far as the present appeal is concerned, we must hold that the appeal fails and dismiss the same with costs.

Appeal No. 2743 differs from *appeal No. 2194*, in that it is admitted in this case that the application for the issue of notices against defendants Nos. 14 and 15 was not made within the period of limitation fixed by section 167 of the Bengal Tenancy Act. Those two persons appear to be interested in the encumbrances and were necessary parties, if the encumbrances were to be set aside; and it was, in our opinion, impossible for the plaintiff to succeed in her suit without making them parties and proving that notices had been duly served on them. But the suit so far as those two persons are concerned is clearly barred by limitation, and it must therefore equally fail against all the other defendants jointly interested with them in the tenure.

We hold therefore that the suit fails, and we dismiss the appeal with costs, on the ground that the suit as against all the defendants is barred by limitation.

Appeals dismissed.

32 C. 716.

[716] APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Mookerjee.

RAJ CHANDRA ROY v. FAZIJUDDIN HOSSEIN.*
[4th August, 1904.]

Limitation—Limitation Act (XV of 1877), Sch. II, Art. 14—Estates Partition Act (Bengal Act VIII of 1876), s. 116—Suit for possession.

In a partition proceeding, a dispute arose as to whether certain plots of land were included in the property to be partitioned or not.

An enquiry was made by a Special Deputy Collector, who made a report to the Collector, holding the partition proceedings.

The Collector passed an order on the 9th August 1893 under s. 116 of the Estates Partition Act directing that the partition proceedings be struck off.

On the 19th January 1897, the plaintiffs brought a suit for declaration of their title to the said disputed plots of land and to recover possession thereof.

On an objection by the defendants that the suit, not having been brought within one year from the date of the order of the Collector, was barred by limitation:

Held that, Article 14, Schedule II of the Limitation Act (XV of 1877) did not apply to the case, and that the suit was not so barred.

Parbati Nath Dutt v. Rajmohan Dutt (1) distinguished.

[Ref. 36 Cal. 726; 49 I. C. 765.]

APPEAL by the plaintiffs Raj Chandra Roy and others.

This appeal arose out of an action brought by the plaintiffs to recover possession of certain plots of land on declaration of their title thereto.

* Appeal from Original Decree No. 485 of 1903 against the decree of Dina Nath Sarkar, Subordinate Judge of Mymensingh, dated the 23rd of June 1902.

(1) (1901) I. L. R. 29 Cal. 867.

The allegations of the plaintiffs were that on the application of defendant No. 7 proceedings were instituted for the partition of Taluk No. 6595 in the Mymensingh Collectorate ; that the plaintiffs and their co-sharers appeared and asked for partition according to their respective shares.

A dispute having arisen as to whether certain plots of land were included in the property partitioned or not, an enquiry was made by a special Deputy Collector, who made a report, to the [717] Collector holding the partition proceedings, to the effect that the said plots of land were in the adverse possession of defendants Nos. 1-2. Thereupon the learned Collector on the 9th August 1893 struck off the partition proceedings under cl. (2) of Section 116 of the Estates Partition Act. On the 19th January 1897, the plaintiffs brought the present suit. The defence mainly was that the suit was barred under Article 14, Schedule ii of the Limitation Act. The Court of First Instance allowed this objection and dismissed the plaintiffs' suit. Against this decision the plaintiffs appealed to the High Court.

Babu *Dwarkanath Chuckerbutty* (with him Babu *Taruck Nath Chuckerbutty*) for the appellant. The case of *Parbati Nath Dutt v. Rajmohun Dutt* (1) is distinguishable. In that case the Revenue authorities enquired into the contention raised by the plaintiff under s. 116 of the Estates Partition Act, and decided it against him. In the present case the Collector only struck off the partition proceedings, and did not enquire into the objection raised by the plaintiffs. It is not necessary for the plaintiffs to set aside the order of the Collector and therefore Art. 14, Sch. ii of the Limitation Act, does not apply.

Babu *Ram Churn Mitter* (with him Moulvi *Serajul Islam*) for the respondents. The case of *Parbati Nath Dutt v. Rajmohun Dutt* (1) is on all fours with the present one. The plaintiff was bound to set aside the order of the Collector, and the present suit having been brought more than one year after the order passed by the learned Collector, was barred by limitation.

BRETT AND MOOKERJEE, JJ. The present plaintiffs appellants brought a suit for declaration of their title to certain plots of land and to recover possession thereof. The suit has been dismissed by the Subordinate Judge on the ground that it is barred by the special limitation provided under Article 14 of the second schedule of the Indian Limitation Act. It appears that previously in 1893, an application was made by the other co-sharers of the plaintiffs of other estates for partition of the Estates, that [718] disputes arose as to whether certain plots of lands were included in the property to be partitioned or not, and an enquiry was made by a Special Deputy Collector and report with reference to that dispute was made to the Collector, who was holding the partition proceedings. On receipt of that Report the Collector being satisfied that there was a dispute with reference to the land in question, passed an order on the 9th August 1893 under section 116 of Act VIII of 1876 B. C. directing that the partition proceedings should be struck off. The present suit was instituted on the 19th January 1897. The Subordinate Judge held on the authority of a judgment of this Court in the case of *Parbati Nath Dutt v. Rajmohun Dutt* (1) and having regard to the provisions of section 116 of the Estates Partition Act, that the present suit was barred under the provisions of Article 14 of the second schedule of the Indian Limitation Act. We do

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(1) (1902) I. L. R. 29 Cal. 367.

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not think that this view taken by the Subordinate Judge, against which the present appeal has been preferred, can be supported. The present suit was brought by the plaintiffs not to have the order of the Collector dated the 9th August 1893, set aside, but to obtain possession of certain plots of lands and for a declaration of their title thereto. The order of the Collector staying and striking off the partition proceedings, until the parties to the dispute had had the matter in dispute between them decided by a Court of competent jurisdiction, cannot be regarded as in any way standing in the way of the plaintiffs obtaining the reliefs, which they claimed in the present suit; and it was therefore unnecessary for the plaintiffs in this suit to have that order set aside. The limitation under Article 14 of the second schedule of the Indian Limitation Act, does not in our opinion, apply to this case, as the case is not one brought to set aside the order of any public officer.

We therefore set aside the judgment and decree of the learned Subordinate Judge and direct that the case be sent back to him for trial on the merits. The appeal is decreed with costs.

The institution fee in this appeal will be returned under section 13 of the Court Fees Act.

Appeal allowed.

32 C. 719 (=1 C. L. J. 232.)

[719] APPELLATE CIVIL.

Before Mr. Justice Harington and Mr. Justice Mookerjee.

SHIB CHANDRA ROY v. CHANDRA NARAYAN MUKERJEE.*

[8th March, 1905.]

Principal and agent—Suit for account—Limitation Act (XV of 1877), Arts. 89 and 120, Sch. II.

A suit by a principal against his agent for an account and also for recovery of money from him that may be found due, is a suit for moveable property received by the agent on behalf of the principal and not accounted for, and is governed by Art. 89, Sch. II of the Limitation Act (XV of 1877).

Jogendra Nath Roy v. Deb Nath Chatterjee (1) followed.

[Fol. 3 I. C. 684=9 C. L. J. 107; 13 C. W. N. 43; Ref. 35 Cal. 298=12 C. W. N. 890 =7 C. L. J. 279; 5 I. C. 58=14 C. W. N. 121; 4 C. L. J. 198; 3 I. C. 101; Ref. 10 I. C. 325=13 C. L. J. 418=15 C. W. N. 752; 16 C. L. J. 282=17 C. W. N. 5=16 I. C. 742; 4 C. L. J. 198; 9 C. L. J. 107=3 I. C. 684; 16 C. W. N. 1042=16 C. L. J. 288=16 I. C. 414; 13 C. W. N. 43n.; 25 I. C. 288=21 C. L. J. 46; 13 M. L. T. 257=24 M. L. J. 313; 26 I. C. 740=28 M. L. J. 140=39 Mad. 976; 21 C. L. J. 462=29 I. C. 848=20 C. W. N. 356; 52 I. C. 378=17 A. L. J. 805; 30 C. L. J. 90=53 I. C. 675; Rel. 43 Cal. 248.]

SECOND APPEAL by the plaintiff, Shib Chandra Roy Chowdry.

This appeal arose out of a suit for accounts.

The allegation of the plaintiff was that the defendants executed an *izara kabuliat* dated 28th Sraban 1299 and obtained *izara* of the plaintiff's share of estate No. 284 for six years from 1299 to 1304 B.S. at an annual rental of Rs. 498-3 annas; that the defendants became *tehsildars* of the plaintiff in certain mauzas and served him as such from 1299 to 1305 B.S.,

* Appeal from Appellate Decree, No. 1596 of 1902, against the decree of Shyam Chand Roy, Subordinate Judge of Birbhum, dated April 21, 1902, reversing the decree of Ganendra Nath Mukherjee, Munsif of Bhagalpur, dated September 3, 1901.

(1) (1903) 8 C. W. N. 113.