

1904
JULY 19.
—
APPELLATE
CIVIL.
—
32 C. 162.

" every settement of rent or decision of a dispute by a Revenue Officer " can only properly apply to those cases which the Revenue Officer has jurisdiction to try. Here the Revenue Officer had no such jurisdiction. The appeal is dismissed with costs.

Appeal dismissed.

32 C. 165.

[165] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pargiter.

AMRITA LAL BAGCHI v. JATINDRA NATH CHOWDHRY.*

[17th August, 1904.]

Limitation—Cause of action, accrual of—Adoption—Limitation Act (XV of 1877) Sch. II, Art. 141—Reversioners, suit by—Hindu widow, alienation by—Minority, evidence of.

A Hindu widow alienated certain immoveable property belonging to her husband's estate, and after the alienation adopted K. in the year 1857 who died in 1862 after attaining majority, leaving his widow S. who succeeded him. S. died in 1899, and the plaintiffs, as reversionary heirs of K. instituted this suit for setting aside the alienation and establishing their right:—

Held, that the present suit was barred by the law of limitation, the cause of action having accrued to the adopted son K. during his lifetime; and that Art. 141, Sch. II of the Limitation Act (XV of 1877) did not govern this case.

Gobinda Nath Roy v. Ram Kanay Chowdhry (1) and *Prosanna Nath Roy v. Ajsolonnessa Begum* (2) doubted.

Lakshman v. Radhabai (3), *Nathaji Krishnaji v. Hari Jagoji* (4), *Moro Narayan v. Belaji Rughunath* (5) and *Bijoy Gopal Mukerji v. Nil Ratan Mukerji* (6) referred to.

[*Ref.* 21 C. L. J. 157 = 19 C. W. N. 1280 = 27 I. C. 954]

APPEAL by Amrita Lal Bagchi, the plaintiff.

Frankissen Bagchi, a Hindu inhabitant of Calcutta, died childless in 1852, leaving his widow Labangamoni and possessed of considerable immoveable properties, among which was one called Nunebheri in the district of 24-Parganas. Before his death Frankissen had executed an *anumatipatra* in favour of his wife, Labangamoni, authorising her to adopt to him two sons in succession. Shortly after her husband's death, Labangamoni adopted a son, named Baikantha, who however died within a few months of his adoption. In 1857 Labangamoni adopted another son named Kali Nath. Kali Nath died in 1862, leaving a widow named [166] Sukhoda, who succeeded him and who was then a minor. Before the adoption of Kali Nath took place and after the death of the first adopted son, Baikantha, namely on the 13th August, 1857, Labangamoni had granted a permanent lease of the Nunebheri property to the predecessors in interest of the defendants. Labangamoni died on the 3rd February, 1896, and Sukhoda died on the 7th August, 1899.

The present suit was brought by the plaintiffs on the 13th June, 1902 on the allegation that they were the reversionary heirs of Kali Nath, and that as such they were entitled to recover possession of the property or

* Appeal from the Original Decree, No. 865 of 1902, against the decree of Bhagabati Charan Mitter, Subordinate Judge of 24-Parganas, dated Aug. 11, 1902.

(1) (1875) 24 W. R. 183.

(2) (1878) I. L. R. 4 Cal. 523.

(3) (1887) I. L. R. 11 Bom. 609.

(4) (1871) 8 Bom. H. C. 67.

(5) (1894) I. L. R. 19 Bom. 809.

(6) (1903) I. L. R. 30 Cal. 990.

the death of Sukhoda, the widow of Kali Nath, inasmuch as the lease granted to the predecessors in interest of the defendants was invalid as having been granted without legal necessity. The plaintiffs further claimed to recover from the defendants certain compensation moneys paid by Government for a portion of the disputed property acquired by the Government.

The defendants, in their answer, raised the question of the suit being barred by limitation on the ground that the cause of action for setting aside the said lease arose so far back as the year 1857 when the adoption of Kali Nath took place; and further contended that there was legal necessity for the said lease, and also that they having effected numerous and costly improvements to the property, the defendants were not entitled to recover possession of the same.

Various issues were raised in the lower Court and evidence was fully gone into on all the points, but the Court decided the suit on the point of limitation, holding that the suit was barred, inasmuch as the cause of action for setting aside the said lease having arisen in 1857, time continued to run uninterruptedly till the date of Kali Nath's death in 1862, and the intervention of the estate of Sukhoda, the widow of Kali Nath, did not retard its progress; and it accordingly dismissed the suit. The plaintiffs thereupon preferred the present appeal on the ground, that the lower Court was wrong on the question of limitation, the suit having been instituted within 12 years after the death of Sukhoda, widow of Kali Nath, was within time under Art. 141, Sch. II of the Limitation Act.

[167] Babu *Ashutosh Dhar*, Babu *Mohendra Nath Roy*, Babu *Jnanendra Nath Bose* and Babu *Jogendra Nath Chatterji*, for the appellants.

Dr. *Rash Behary Ghose*, Babu *Golap Chandra Sarkar*, Babu *Jagat Chandra Banerji* and Babu *Charu Chandra Ghose*, for the respondents.

RAMPINI and PARGITER, JJ. This is an appeal against a decision of the Subordinate Judge of Alipore, dated the 11th August, 1902. The suit out of which the appeal arises was brought by the plaintiff to establish his right as the reversionary heir to one Kali Nath Bagchi, who died in 1862, and to set aside an alienation of certain property made by the adoptive mother of Kali Nath Bagchi in 1857. This adoptive mother, Labangamoni, was the widow of one Pran Kissen Bagchi, who died in 1852. He gave her power to adopt. She first adopted one Baikantho who died. She then made the alienation now in dispute, and subsequently adopted Kali Nath Bagchi. Kali Nath died in 1862, and was succeeded by his widow Sukhoda, who died in 1899. The suit was brought in 1902. The plaintiff claims that the cause of action accrued to him on the death of Sukhoda.

The Subordinate Judge has held that the cause of action accrued under the old law on the date of the adoption of Kali Nath. Further, he has found that Kali Nath was of full age in 1862, when he died, and so, if the cause of action did not accrue in 1857, it accrued in 1862, and the suit being brought more than 12 years after that date is hopelessly barred.

The plaintiff appeals and challenges the correctness of the Judge's findings on both points. In support of the appellant's contention that the cause of action accrued on the death of the widow Sukhoda, Article 141 and two cases, *Gobinda Nath, Roy v. Ram Kanay Chowdhry* (1) and *Prosonna Nath Roy v. Afzolonnessa Begum* (2), are relied on. But at the date of the adoption of Kali Nath, which was after the alienation, to set

1904
AUG. 17.
APPELLATE
CIVIL.
32 C. 165.

(1) (1875) 24 W. R. 183.

(2) (1878) I. L. R. 4 Cal. 523.

1904
AUG. 17.
—
APPELLATE
CIVIL.
—
32 C. 165.

aside which this suit is brought, the rule of limitation in force was that laid down in section 14, Reg. III of 1793. It is clear from the cases of [168] *Lakshman v. Radabai* (1), *Nathaji Krishnaji v. Hari Jagoji* (2), *Moro Narayan v. Balaji Raghunath* (3) and *Bijoy Gopal Mukerji v. Nil Ratan Mukerji* (4) that the cause of action in respect of the alienation accrued to Kali Nath as soon as he was adopted. According to the old law, it became barred 12 years from that date, *i.e.*, in 1869. The case of *Gobinda Nath Roy v. Ram Kanay Chowdhry* (5) is a peculiar one. The facts of the case are not clear, and the correctness of the decision has been impugned by Mr. Mayne at section 197, p. 254 of his "Hindu Law and Usage." The case of *Prosonna Nath Roy v. Afzolonnessa* (6) is also a peculiar one, and the correctness of the decision in it has apparently been doubted by Babu Upendra Nath Mitter at page 684 of his work on Limitation, and by Mr. Starling at page 178 of his work on the same subject.

We are, however, relieved from the burden of distinguishing these cases by the fact found, and in our opinion correctly found, by the Subordinate Judge that Kali Kishen Bagchi had attained the age of 16 years before he died. The oral evidence on the point in this case is no doubt neither consistent nor reliable, but we rely on a statement made by one of the plaintiffs, Umesh, in a previous suit, in which he said that Kali Kishen was 14, 15 or 16 when he died. In a previous judgment of this Court, dated the 8th March, 1900, it is stated that "Kali Kishen died at the age of 16, leaving his adoptive mother and his widow him surviving," and in a deed to be found at page 19 of the paper book he is described as "having died intestate," an expression not usually used with regard to a minor. Till this case arose it never seems to have been questioned that Kali Kishen died after attaining the age of 16. We do not rely on the entry of his age in the register of attendance of the Hare School, the admission of which has been objected to, for the ages of boys attending school are not always accurately entered in the school register.

That being so, there can be no doubt that the suit is barred by limitation. We dismiss the appeal with costs.

Appeal dismissed.

32 C. 169 (=9 C. W. N. 96).

[169] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice.

HEMENDRA NATH MUKERJEE *v.* KUMAR NATH ROY.*

[25th June, 1904.]

Limitation—Suit for damages—Suit for rent—Whether a suit, for rent payable by tenant under lease to superior landlord, is one for rent or damages—Bengal Tenancy Act (VIII of 1885) s. 3 (5), lease, construction of.

A took a lease of certain mouzahs from B in darputnee and seputnee, and covenanted to pay annually Rs. 3,191 to the superior landlords of B direct and Rs. 1,500 to B. A was to take receipts from the superior landlords, make them over to B and take receipts from the latter. The whole amount of Rs. 4,991 was described in the lease as *annual rent fixed*, and in certain eventualities

* Appeal from Original Decree No. 420 of 1902, against the decree of Bhubar Mohan Ghose, Subordinate Judge of Nuddea, dated 26, Sept. 1902.

(1) (1887) I. L. R. 11 Bom. 609.

(2) (1871) 8 Bom. H. C. 67.

(3) (1894) I. L. R. 19 Bom. 809.

(4) (1903) I. L. R. 30 Cal. 990.

(5) (1875) 24 W.-R. 123.

(6) (1878) I. L. R. 4 Cal. 523.