P. C. 1868

EKOWRI SING v. HIRALAL SEAL.

have been, in course of things, a nucleus to the increment; and, therefore, an inquiry into its origin and direction was one that ought not to have been neglected. The case itself is one turning on views of evidence on which their Lordships would be reluctant to differ from the opinion of a Court more likely to know, than their Lordships can be, what weight of proof would satisfy in India the just expectations of a Court of Justice.

Their Lordships, therefore, agreeing with the High Court in their disregard of the chittas, and with their conclusion that the case was not sufficiently proved, will humbly recommend to Her Majesty that the appeal be dismissed with costs.

RANI SWARNAMAYI v. SHASHI MUKHI BARMANI AND OTHERS.

P. C. 1863 *Dec.* 17.

ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

Limitation—Section 32 *of Act X. of* 1859—*Cause of Action—Trespass.*

See also 13 B. L. R. 452 8 B. L. R. 537.

A, a zemindar, sold the rights of B, his putnidar, for arrears of rent, under Regulation VIII. of 1819. This sale was subsequently set aside at the suit of B for irregularity. A then sued B for the arrears, under Act X. of 1859, and B raised the defence that the suit was barred, more than 3 years having elapsed from the close of the year in which the arrear became due.

Held (reversing the decision of the High Court), that upon the setting aside of the putni sale, the putnidar took back the estate subject to the obligation to pay the rent; and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year.

Also *held*, that A was not guilty of a trespass in bringing the property to sale under a defective notice, and A could not have sued for the arrears pending the proceedings to set aside the sale.

THIS case was decided by the High Court, on the 9th August 1864 (BAYLEY and PHEAR, JJ.), on an appeal from the decision of the Deputy Collector of Nuddea, dated 22nd December 1863.

The facts are sufficiently explained in the following judgment of the High Court, which was delivered by

PHEAR, J.—This suit is brought for arrears of rent of a putni talook, due in 1857, with interest thereon.

* *Present:* LORD C. CHELMSFORD, SIR JAMES W. COLVILE, LORD CHIEF BARON, AND SIR LAWRENCE PEEL.

In 1858, the plaintiffs realized these arrears, with interest, for breach of kist, and costs, by a sale of the defendants' putni rights under Regulations VIII. of 1819.

Afterwards, namely on the 5th February 1859, some of the defendants instituted a suit in the Civil Court to set aside the sale, on the ground of irregularity. Judgment was given in this suit on the 26th June 1860, setting aside the sale, and directing the plaintiff in this suit to repay the consideration-money with interest. On appeal, the High Court affirmed this decision by a decree given on the 26th June 1860.

The plaintiff has repaid this money, and now brings this suit for the recovery of the original arrears.

The defendants, among other and separate defences, all set up the statute of limitations as a bar to the plaintiffs' suit, but the Deputy Collector over-ruled this, and determined in favour of the plaintiffs' claim, remarking as follows: "As regards the question of limitation, it is perfectly clear that the plaintiff could not both take the rent and sell the putni talook; as long, therefore, as he was engaged in lawfully defending a suit to reverse the sale, he could not possibly sue for the rent. The cause of action cannot, therefore, have accrued prior to the date of the Judge's decision; and the suit is, therefore, within the three years. Doubtless, the period during which plaintiff was prosecuting his appeal should equally be excluded from the reckoning, but it will be seen it is not necessary for plaintiff to urge this, as the date of the judgment of the lower Court serves his purpose."

The substantial ground of appeal to this Court, is upon the question as to the limitation of time for bringing the suit.

The plaintiff urged, *firstly*, that the arrears were put in abeyance by satisfaction out of the proceeds of the irregular sale and revived or rather became a second time due, when the High Court, in 1860, finally declared the sale to have been illegal, and decreed restitution of the purchase-money with costs. Thi ground of contention is untenable, otherwise the plaintiff would be enabled to take advantage of his own wrong. He committed a trespass in bringing to sale that property with a defective notice, when it was his duty in law to have that notice duly served, and cannot now be heard to say that that trespass prevented time from running against his right of action.

P. C. 1868 Dec. 17.

RANI SWARNAMAYI v. SHASHI MUKHI BARMANI.

Secondly. He maintains that at any rate, his cause of action was subsisting at the time of the passing of the Act X. of 1859, and that as he was unable, on account of the pending litigation above-mentioned, to sue during the first portion of the three years prescribed by that Act for causes of action so situated, he is entitled to deduct from the computation of those 3 years, at least so much of the time as intervened between the passing of the Act and the decree of the High Court on 26th June 1860. On this we must observe that the words of Section 32 of the Act are absolute, and unlike those of similar statutes, do not either expressly or by implication admit of any exception whatever to their operation. It was urged that the exception to the limitation in Act XIV. of 1859 may be applied by analogy. But this is not so, for Section 32 of Act X. of 1859 is a special statute of limitation of itself for all cases coming under that Act. Moreover, it is not correct to say that this suit could not have been brought pending the litigation respecting the irregular and invalid sale, and here again he cannot claim any benefit from acts of his own which he ought from the beginning to have known were illegal or defective, for he could at any time have sued and abided the result, so saving his time.

The appeal must be upheld, on the ground that the plaintiff's suit was barred by Section 32 of Act X. of 1859.

Their Lordship's judgment was as follows :—

THE FACTS of this case are simply these. The appellant is a zemindar. Those whom she represents had granted a putni talook, and the putnidars had fallen into arrear. The zemindar, the appellant, pursued her remedy under Regulation VIII. of 1819, and brought the talook to sale. It sold for a sum greatly in excess of the rent in arrear. The purchaser was put in possession of the talook. Out of the purchase-money the arrears were paid, and the balance, in the ordinary course, remained in the Collector's hands for the benefit of those who were entitled to it. A suit was then brought to set aside the sale of this putni talook, on the ground of irregularity ; and we must assume that it was correctly set aside by the judgment of the Court below. The first

judgment on the case was on the 26th December 1860. The appellant brought her appeal in the High Court, and the final judgment, dismissing her appeal, was on the 30th June 1863. The effect of the judgment was, that she had to pay back the purchase-money to the purchaser, with interest; that the putnidars were again put into possession of the talook; and that they recovered the mesne profits, during the period in which they were out of possession, from the purchaser. The appellant then brought the present suit for recovery of the arrears of rent. She brought it in the Collector's Court, as in an ordinary case; and must, therefore, we apprehend, be taken to have brought it under Act X. of 1859. She was then met by the defence that the suit was out of time; that it was barred by the 32nd section of that Statute; the construction put on that enactment being that the suit should have been brought within three years from the time on which these arrears first became due, *viz.*, the last day of the year for which the rents constituting them had accrued. The result of the decision is, that she has not only lost the remedy which Regulation VIII. of 1819 gave her, but that she has no other remedy for those arrears of rent. If that decision is founded upon grounds which cannot be shaken, it certainly is a very unfortunate result, and a result, which obviously works a great injustice; for the putnidars have got back their putni, and have, at the same time, relieved themselves from the obligation of paying, for that period, the very rent upon which they held it.

The case of the appellant has been argued on various grounds. Mr. Cave has argued that this clause is to be qualified by introducing certain clauses of the old Regulation of Limitation of 1793. He has also argued that if those clauses can no longer be imported into the consideration of the case, it falls within one of the exceptions imported into the existing Act of Limitation, the Act XIV. of 1859.

Their Lordships are of opinion that if this case had arisen in an ordinary Court of law, and the Statute of Limitations to be applied was Act XIV. of 1859, there could be no doubt at all upon the question; and that it would not be necessary to fall back upon the exception referred to by Mr. Cave, because it seems to their Lordships to be perfectly clear that the cause of action

P. C. 1868

RANI SWARNAMAYI v. SHASHI MUKHI BABMANI.

accrued at the time at which, the sale having been set aside, the obligation to pay this sum of money revived; and whether that time be taken to be the date of the first decree or the date of the final decree, the present suit would, in either case, have been brought in time. They do not, however, think it necessary to decide that either that Act, or the particular exception in it, is to be brought in to qualify the peculiar and special law of Limitations introduced by the Act of 1859, because they think that, upon the fair construction of the 32nd section of that Statute (Act X. of 1859) the time had really not run. Their Lordships' view of the case is this: that, upon the setting aside of this sale, and the restoration of the parties to possession, they took back the estate subject to the obligation to pay the rent; and that the particular arrears of rent claimed in this action must be taken to have become due in the year in which that restoration to possession took place. It follows that upon the language of the 32nd section of Act X. of 1859, the appellant was not barred from her remedy. Their Lordships further authorize me to say that they do not concur in the position of the High Court, that the appellant can be said to have committed an act of trespass, because, when she pursued the remedy, which was clearly competent to her, if it had been regularly pursued, she inadvertently omitted one of the formalities prescribed by the Act, and that her proceedings, therefore, became inoperative. Their Lordships cannot treat this as an act of trespass, or hold, with the High Court, that in bringing this suit she is a person seeking to take advantage of her own wrong. They must also respectfully dissent from another statement of the learned Judges of the High Court, to the effect that the appellant might have sued for these arrears pending the proceeding to set aside the sale of the putni. It is clear that until the sale had been finally set aside, she was in the position of a person whose claim had been satisfied; and that her suit might have been successfully met by a plea to that effect.

On these grounds, their Lordships are prepared to recommend to Her Majesty that the appeal be allowed with costs; that the judgment of the High Court be reversed; and in lieu thereof, that the appeal to that Court be dismissed, and the judgment of the Court below affirmed with costs.