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1880

CHUNDER
SIKHUR
BUNDO-
PADHYA
v.
OBHOY
CHURN
BAGCHI.

THIS was a suit to recover possession of certain land taken by the Santipore Municipality. The plaintiff stated that he was dispossessed from the land on the 20th Aughran 1281 (5th December 1874) and that he, on the 8th Pous in the same year (22nd December), served a notice on the Municipality asking for redress, but that the Municipality did not grant him any redress within the period of one month, and that his cause of action then rose. The defendants contended, that as they had been in possession of the land for more than three months before the date of the accrual of the cause of action, the suit was barred by the special law of limitation under Beng. Act III of 1864.

The Judge of Nuddea, reversing the decision of the Munsif, gave the plaintiff a decree. The defendants appealed to the High Court.

The learned Judges, before whom the appeal was heard (Jackson and Tottenham, JJ.) referred the case for the opinion of the Full Bench in the following terms:—

"The question arises in this case whether the suit, which is not brought for the purpose* of recovering damages on account of a wrong done, but to recover possession of a specific piece of land taken by the Municipal Commissioners of Santipore, is barred under s. 87, Beng. Act III of 1864, now repealed, by reason of the suit not having been commenced within three months next after the accrual of the cause of action. In a case very similar, *Poorno Chunder Roy v. Balfour* (1), before Bayley and Phear, JJ., the former learned Judge was of opinion that the special rule of limitation applied. Phear, J., questioned this, but concurred in dismissing the suit on other grounds.

"In *Price v. Khilat Chandra Ghose* (2) Loch and Hobhouse, J., held the section not to apply on grounds which appear open to observation; and in *The Municipal Committee of Moradabad v. Chatri Singh* (3) the High Court of the North-Western Provinces adopted the view of Phear, J.

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“There is a case, however—*Abhayanath Bose v. The Chairman of the Municipal Committee of Kishnaghur* (1)—where Norman J., rather broadly laid it down, that three months’ notice was necessary, where the plaintiff sued to restrain the Commissioners from interfering with a road which he claimed as his private road.

“There is thus some conflict of decision; and although the inclination of our own opinion is decidedly in favour of the view taken by Phear, J., as the point is of considerable importance, we think it right to refer the matter to a Full Bench.”

Baboo Mohiny Mohun Roy and Baboo Saroda Prosonno Roy for the appellants.

Baboo Ishen Chunder Chuckerbutty for the respondent.

The judgment of the Full Bench was delivered by

GARTH, C. J.—As the relief which has been decreed in these suits is for the specific recovery of land, irrespective of any damage for the plaintiff’s dispossession, we consider that the 87th section of Beng. Act III of 1864 does not apply.

That section, as it seems to us, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the Commissioners or their officers, in the exercise, or the honestly supposed exercise, of their statutory powers.

The notice in the earlier part of the section is meant to give the defendant the opportunity of making some pecuniary amends for the wrong, without incurring the cost of litigation.

We think that it could hardly have been the intention of the legislature to allow the Commissioners (even by mistake) to appropriate the lands of private persons without paying for them, and to hold those lands for ever as against the true owners unless the latter should happen to be sufficiently watchful to discover the aggression in time to take steps to protect their property within so short a period as two months.

The appeals will therefore be dismissed with costs, including the costs of this reference.