

## APPELLATE CIVIL.

*Before Mr Justice Rampini and Mr. Justice Sharfuddin.*

1907  
 May 1.

RANJIT SINGH

v.

RADHA CHARAN CHANDRA.\*

*Limitation—Limitation Act (XV of 1877), Schedule II, Arts. 113, 142, 144—Chaukidari chakran lands—Resumption by Government—Putni lease—Suit by putnidar for possession of the chakran lands—Village Chaukidari Act (Bengal Act VI of 1870) ss. 48, 51.*

By virtue of a *putni* lease granted by the defendant-landlord in 1854, the plaintiff was entitled to the *chaukidari chakran* lands of the *mehal*, which were subsequently resumed by Government, and not made over to the *zemindar* till 1899. Upon a suit by the *putnidar* to recover possession of the *chakran* lands, the defendant contended that the suit was barred by limitation under Art. 113 of the Limitation Act:—

*Held*, that inasmuch as the lands were not in possession of the plaintiffs nor in that of the defendant, until they were made over to the latter by Government, the suit was one for the specific performance of the contract of 1854, and the period of limitation applicable would, therefore, be that prescribed by Art. 113, and not Art. 142 or Art. 144, of Schedule II of the Limitation Act.

SECOND APPEAL by the defendant No. 1, Raja Ranajit Singh Bahadur.

This appeal arises out of an action brought by the plaintiffs, on the 7th March 1904, to recover possession of certain *chaukidari chakran* lands of *mouzahs Bahra and Amlai*.

The plaintiffs' allegation was that the defendant granted in June 1854 a *putni* lease of these *mehals*, including the *chaukidari chakran* lands, to the plaintiffs; and that they were entitled to get possession of these lands under s. 51 of the Village Chaukidari Act (Bengal Act VI of 1870) on payment of the sum assessed by *panchayat* of the village.

It appears that the *chaukidari chakran* lands were resumed by Government and were not made over to the *zemindar*-defendant.

\* Appeal from Appellate Decree, No. 723 of 1906, against the decrees of Arthur Gcodeve, District Judge, Birbhoom, dated Feb. 7, 1906, confirming the decree of Hari Prosad Dass, Subordinate Judge of Birbhoom, dated April 15, 1905.

till 12th September 1899. The defendant contended that all the chaukidari chakran lands of the two mouzahs were excepted from the putni lease, granted to the plaintiffs' predecessor, and that therefore the plaintiffs were not entitled to get possession of the said lands; and that the suit was barred by limitation.

The Court of first instance overruled the objection of the defendant, and holding that either Art. 142 or Art. 144, and not Art. 113, of the Second Schedule of the Limitation Act was applicable to the case, decreed the plaintiffs' suit.

On appeal, the decision of the first Court was confirmed by the District Judge of Birbhum. Against this decision the defendant appealed to the High Court.

*Dr. Rash Behary Ghose (Babu Lal Mohon Das, Babu Satis Chunder Ghose and Babu Hemendra Nath Sen with him)*, for the appellant, contended that the suit was clearly barred by limitation; this being a suit for specific performance of the contract, Art. 113 would apply to the case. The plaintiffs would be entitled to recover possession of the chaukidari chakran lands under the putni lease only; the land was transferred to the zemindar by Government in the year 1899, and under s. 51 of the Village Chaukidari Act, subject to all contracts theretofore made in respect of, under, or by virtue of which any person other than the zemindar may have any right to any land. The landlord at the time of the lease was not in possession of the lands; they were made over to him in the year 1899, The plaintiffs could not sue for these lands before they were made over to the defendant, and therefore now they are suing for the specific performance of the contract.

*Babu Ram Chandra Mozumdar (Babu Promotho Nath Sen and Babu Sarat Kumar Mitter with him)*, for the respondents. This is not a suit for the specific performance of a contract, for it is one for recovery of immovable property from which they were dispossessed by the defendant-landlord; therefore Art. 113 is not applicable. The title to these lands vested in the plaintiffs in the year 1854, the time of the lease. They were made over to the plaintiffs at the time of the lease, but the defendant-landlord dispossessed them from these lands after getting settlement from

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Government. Under Art. 113, three years would run from the date fixed for performance of a contract; here in the putni lease no date was fixed for the performance of the contract. It is not found when the plaintiffs had notice that specific performance was refused.

*Dr. Ghose, in reply.*

*Cur. adv. vult.*

RAMPINI AND SHARFUDDIN JJ. This appeal arises out of a suit brought by certain putnidars to obtain possession of certain chaukidari chakran lands. These lands have been resumed by Government and made over to the zemindar-defendant, and the putnidars contend that under the terms of their putni lease executed in their favour in June, 1854, they are entitled to possession of these lands.

The lower Courts have given them a decree.

The defendant appeals. It is urged on his behalf (i) that the suit is barred by limitation under Article 113 of the Limitation Act; (ii) that the lands in dispute are not covered by the plaintiffs' putni lease; and (iii) that the lower Court should not have given the plaintiffs a decree without settling what additional putni rent the plaintiffs should pay to the defendant.

It would seem to us that the second and third of these contentions must fail. We agree with the lower Courts in their interpretation of the plaintiff's putni lease. It conveys to the plaintiffs all the chaukidari chakran lands of the mehal, except certain lands of this class appertaining to the "Perganah Cutcherry." That expression would seem to have been rightly interpreted by the lower Courts as referring to the chaukidari chakran lands appertaining to the Sadar Cutcherry of the appellant at Nalhati and as not covering the lands in dispute.

It would further seem to us that the lower Courts have rightly left the question of the additional rent payable by the plaintiffs to be settled in another suit. There are apparently no materials on which this question could be decided. The plaintiffs seem to have been found by the First Court to have been in

enjoyment of the 'chaukidar's services, so that the rule laid down in *Kazi Nawaz Khoda v. Ram Jadu Dey*(1) would, apparently apply in this case. But the District Judge has come to no finding on this point; so the question of the additional rent payable by the plaintiffs must be left open.

We now turn to the appellant's first plea. It would seem to us that this suit must be governed by the rule of limitation laid down in Art. 113 and not by that prescribed by either Arts. 142 or 144 of the Schedule II to the Limitation Act. The plaintiffs claim the lands in dispute under their lease of 1854. Under this deed they are entitled to all the chaukidari chakran lands of the mehal, except certain excepted lands, of which the lands now sued for are no part. Hence they claim these lands under the terms of their contract. The lands were not made over to the zemindar-defendant till the 12th September 1899, so the plaintiffs could not claim fulfilment of the contract in respect of these lands from the defendants before then. On behalf of the plaintiffs it is urged that the title to these lands vested in the plaintiffs at the time of the lease of 1854 and hence they are not suing for specific performance of their contract, but for lands from which they have been dispossessed by the defendants taking possession of them in 1899. We are unable to take this view of the matter. The lands were not in possession of the plaintiffs nor in that of the defendant until they were made over to the latter by Government in 1899. The plaintiffs are, therefore, now suing for specific performance of their contract of 1854 in respect of land for which they had no claim against the defendant till 1899. The period of limitation applicable would therefore seem to us to be that prescribed by Article 113.

The respondent's pleader, however, contends that there was no date fixed for performance of this part of the contract in the putni lease, and, hence, under the terms of Article 113, limitation will run from the time when the plaintiffs had notice that performance of this part of the contract was refused, and that, it is said, has been found by the Subordinate Judge to have been some time in Pous 1308, that is, between December 1901 and

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January 1902, or within three years of the institution of the suit.

The Subordinate Judge has not, however, come to this finding in regard to the issue of limitation, and the District Judge has come to no finding at all on this point. We must therefore, while holding that the rule of limitation applicable is that laid down in Art. 113 of the schedule to the Limitation Act, remand the case to the District Judge to find on the evidence on the record when the plaintiffs had notice that specific performance of the contract in respect of the disputed lands was refused. We set aside the decree of the lower Appellate Court and remand the case to it to be disposed of accordingly. Costs to abide the result

*Case remanded.*

S. C. G.