2179/1864

(12)

FR000152

S.A. 2179/64

[P. H. C. SCH. III—1.]

# In the High Court of Judicature at Patna.

(Civil Appellate Side.)

# TITLE PAGE.

## PART I.

(THIS FILE MUST BE PRESERVED FOR EVER)

Special APPEAL ~~FROM~~

No. 2179 of ~~193~~ 1864

Gungadhar Mahapatter & Ors Defts Appellants,

versus

Adhikary Jugoo Das - Plaintiff Respondents.

DATE OF DECISION OF HIGH COURT 28-1-1865

DITTO OF PRIVY COUNCIL

P. L. P.—399—10,000—29-8-35.

2179/1864-01

[P. H. C. Sch. III.—3.]

# In the High Court of Judicature at Patna.

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Special Appeal No. 2179 of 19 1864

Gangadhar Mahapatra & ors — Defendants — Appellants

versus

Adhikary Jugo Das — Plaintiff — Respondent.

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Signature of Officer of Court.

Date 30-3-1923

Compared and found correct.

Record-keeper.

P. P. L.—58—1,000—7-2-30.

2179/1864-02

Ground of Special Appeal

The plaintiffs claim to the idol and temple in being adjudged to be barred by limitation, has not prejudiced the existence of the idol, having the right to the worship of the idol, the plaintiffs being also barred

to attachment

The real question at issue in this case viz. whether the right to the Idol which belongs to your petitioner does not carry with it the endowment attached to it by the founder has not been tried.

The plaintiff, not having proved that the endowment was made a gift of to his ancestors cannot obtain possession of the property attached to the endowment.

The lower court in saying in not declaring that the income of that property which has been devised to the plaintiff should attach be applied to the worship of the idol in the terms of the petition

Petitioner

Vaidyalingam

Respondent

Respondent in the first court 1

Respondent in the second court 2

Judge of the first court

In our judgment there are reasonable grounds for contending that the decision of the lower court is erroneous in point of law in

C. Allyn Assistant Atty

Tuncl Kenneth Sec

2079 -

Plts ~~counsel~~ says that the Defy acquired from his Ancestors certain lands for the support of idols that in 1873 Defts disinherited him - Plts formally the claim & claims that the lands the idols & a part of the land were the subject of an Act IV suit decided in favor of Defts. Plts is barred by limitation under Art. 7 Sch I Act XV of 1877. Plts claims the remainder of the land the claim formerly Plts right established -

has been purchased a considerable portion of the Pachundambu tank and the Plts which seems to be the same as mentioned in the pleadings in Ds 116 of 1865 - returns on the board. Mr Jagannatha that although in the Act IV case it was held a decision against the Temple & lands, the idols being incapable personally carried off by Defts could not be properly subjects of the claim under the Act & therefore as regards them the special limitation would not apply. But even if the limitation were admitted then under the general rules of limitation Plts could not properly claim for the incapable Idols longer period than 6 years & more than 6 years having elapsed since

Plts own showing he is entitled to a decree.

Defts in Cross argue that as the land is supposed to be held for the service of the Idols Plts has for the Idols be entitled to the remainder of the land - But we think that the limitation has been found as a fact that the land belongs to Plts has been held by Plts Defts cannot resume the land to the Idol but if he chooses to do so, he cannot resume the Idols & the land. He might resume Plts description of the Idols as a duty attached to the land but not the land. In the case of the land he can dispute Plts accession to the land & he cannot take the land he can dispute Plts demand to the Idols only - [illegible]

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL. 2

APPELLATE JURISDICTION.

Special APPEAL

No. 2179 preferred on the

9th August, 1864 against the

decree of the Judge of Zillah

Cuttack dated the

9th August, 1864,

Modifying a decree of the Principal Sudder Ameen of that District, dated 25th July, 1863.

Biro Churn

Ganga Churn Roh Jeetur, Chuni Lall Roh Jeetur, Chuto Mony Roh Jeetur, and Sunkur Dass,

Defendants Appellants.

versus

Adhicary Jugoo Dass,

Plaintiff Respondent.

2179/1864-04

APPEAL valued at Rupees 726. 4a 7pie

Upon the hearing of this appeal in a Division Court before the

Honourable Charles Rising Irwin,

and the Honourable George Campbell,

Judges of this Court

on the twenty-eighth day of January 1875.

It is ordered and decreed by the said Court that the appeal

be dismissed

And it is further ordered and decreed that the defendants appellants

do pay to the Plaintiff, Respondent,

the sum of Rupees Forty-four, four annas and nine pie

being the amount of costs incurred by him

in this Court with interest thereon at the rate of 12 per cent. per annum from this date to the date of realization thereof.

| | Rs. | A. | P. |
|---|---|---|---|
| Stamp for petition of appeal ... ... | | | |
| Stamp for answer to petition of appeal | | | |
| Vakeel's fees ... | 36. | 4. | 9 |
| Stamp for Vikalutnamah, ~~and Mokhtearnamah~~ ... | 2. | 0. | 0 |
| Stamp for copy of decree ... ... | 6. | 0. | 0 |
| Total ... | 44. | 4. | 9 |

Dated this 28th day of January in the year of our Lord one thousand eight hundred and sixty-five

Chinnaiah

J Ellerton

Military Orphan Press.—No. 1 H.—29-6-64.—4,000.

2199/1864-05

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Orig. taken by J. for Mr.
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2179/1864-6

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2179/1864-10

Grounds of Special appeal

I The Plaintiffs claim to the idol and temple being adjudged to be barred by limitation, his suit for the appurtenance to the idol being the right to the management of the lands appertaining thereto is also barred.

II The real question at issue in the case viz whether the right to the Idol which belongs to your petitioner does not carry with it the endowment attached to it by the founder has not been tried

III The plaintiff, not having proved that the endowment was made a gift of to his ancestors, can not obtain possession of the property attached to the endowment.

IV The lower Court is wrong in not declaring that the income of the property which has been decreed to the Off should at last be applied

Petition
Def 11
Suit for 1/4 share of certain lands & direction that 1/4 for pandaram as bel & received & land for deep
Next pandaram for temple
Decree 1863 & 64
Def 11 lands
Adj & Pay
Prejudice
26
7
6
Roy
Pl lands

to the worship of the idol
in the hands of the
petitioner

Confs. 1875
8/4/1/44

2179/1864-II

Decision of Babas Mally Prasand Dutt Sadder Ameen dated 25th July 1863.

Jugo das — Plaintiff

vs

Sangathur Mohapatter — Defdts.

The points to be determined in this suit are.

Whether the Plaintiffs claim is barred by the statute of limitation?

In my opinion, it is not. For after the Plaintiff had been dispossessed of a portion of the disputed property, he instituted a suit for recovering possession under Act 6 of 1848 in the Foujdary Court, that case was dismissed and there is no such provision in the Act 14 of 1859 that within three years from the date of the order of dismissal a suit should be instituted. In sec. 7 of the above Act it is distinctly provided that if a Plaintiff case

ordered to be put in possession, in pursuement of a Defendant and if a suit were to be instituted for recovering the possession, the same should be brought within three years, the above provision would have applied to the Plaintiffs case, had he been dispossessed under the orders of the Zaydary (Court); but the Plaintiff was not, he was dispossessed by the Defdts and his suit, instituted within 12 years, is in accordance with section 12 of the above act, and is admissible in every respect Consequently the Defendants plea as to Limitation is untenable

Issues of Facts

1. Whether the disputed Shahoors are the Plaintiffs or the Defendants hereditary property?

II Whether or not the Plffs ancestor

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ancestor acquired the land in dispute as Devisee?

III Whether, before the dispossession the Plaintiffs ancestor and the Plaintiff (Respondent) were in possession of the disputed land as proprietors or as priests

Issues of practice

1 Whether the owners of Shakoors in this Province in having the Dewatter lands surveyed and settled in the names of priests have retained the right of ownership in their own hands or not —

From the evidence of the Plaintiffs witnesses, it is proved that the disputed Shakoors are the Plaintiffs hereditary property; that the great grand father of the Plaintiff acquired the land in dispute from the Defendants ancestor and that he (Pltffs great grand father) and afterwards the

the Plffs grand father &
father, and before the dispos
session took place in 1800
the Plaintiff himself, were
in the enjoyment of the same,
and from the Copy of the
summons, and of the registry,
from the decisions confirming
and sanctioning the rent
free tenure and from the base
of the reserved land which
have been filed by the Plff
the above fact is clearly evident
consequently the plea of the
Defendants is of no avail
the Plaintiff has filed the
receipts for rent paid to the
Zemindar the year previous
to the dispossession thereon
from the Mukubat filed
by the Plaintiff it appears
that the Defendants Gungadhar
and others entered into an
engagement with the Plff.
for a portion of the disputed
land on condition of paying
rent

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ment, and the copy of the
ostensible declaration, filed by
the Plaintiff shows that the
Tenement in question was
partly hewed. Had the Pltff
been only a tenant and not
the owner of the disputed
land, then why should the
Defendants have entered into
an engagement with the
Plaintiff for the land?
Hence the Plaintiffs proprietary
right is fully evident. The
papers connected with the
settlement, and which are filed
with the petition, do not in the
least show that the Defendants
have any sort of right whatever
in the disputed property. An
issue has been framed as
to whether in (this) country
there are precedents of such
settlements having been
made with tenants. But the
Defendants have not been
able to cite any precedents
or

or adduce any reliable evidence on this point. Again the Defendants do not hold any Kiranadi ever granted by the Plaintiff's ancestor whereby to prove that the latter was only a hereditary priest-servant. How can it therefore be reasonable to set aside a claim proved by official public records merely from reliance upon oral evidence and the evidence of witnesses in whom I have no trust?

Now it is necessary to try which of the Defendants is liable to the Plaintiff's claim. From the evidence of the Plaintiff's witnesses it is proved that it was the Defendant Gangadhar Mohapatra who dispossessed the Plaintiff of the disputed property and broke down the temple.

the

Decision of
Mr R
Alexander
Judge of
7th May 1865

Appellate Court Cattack
Civil side
May 7th 1865
Present
R. Alexander Esqr
Offg Judge

Appeal No 10 from order
of Sudder Ameen of Balasore
~~[illegible]~~

Appt Defendant
vs
Juggoo Dosh - Respt Pltff

Suit for the recovery
of certain Hindoo Idols Juggo
with their Dewutter Lands
Bg 26 - 16 - 0 of confirmed
B
2 - 10 - 16 of resumed land
in Mouza Sabrang Pergn
Sunnamut as well as for
Registry of Plaintiffs name

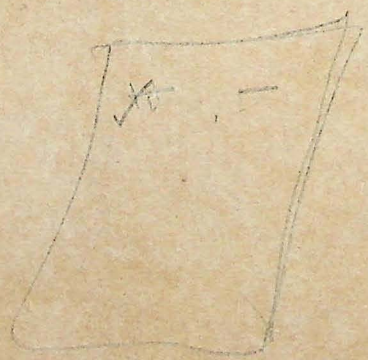
Suit instituted in forma
pauperis.

The Plaintiff state that
his great grand father
received a grant of the

2179/1864-15

lands for the servants
of the village, Brama-
Mohapatter, that the lands
and idols remain in the
possession of his family
up to the time of his father
that then the lands were
settled with his father by
the Deputy Collector
~~Deputy Collector~~
20 - 12 - 0 as Lakhraj & 2 a - 12
resumed and settled at an
annual jumma of 12 a - 8 b
that his father died in the
year 1258 B.S. when Plaintiff
succeeded to the inheritance
that in 1260, on 5th June, the
appellant Brimo & Mahapatra
Rupsick dep & Bethein
Mohapatra dispossessed
him of 5 m - 0 of their lands
and also carried away the
idols, & dispossessed him
of his temple and all the
property belongs to the service
of the idols, that he brought

a suit under Act 2 of 1849
to recover possession but
that his suit was dismissed
on 27th October 1853, that
3 days afterwards the said
defendant dispossessed him
of the remainder of the land.
That having no property he
is obliged to sue as a pauper
prays that his lands
may be restored to him.
The appellant replies that
the land was granted as
state & settled in the name
of Plaintiff's father but that
the settlement gave him no
title as he was only the
priest and the land belonged
to the idols of whom the
priest was the servant.
That for his service the
priest received a money
payment of Rs. 12 per annum
that the Plaintiff was not
content with this allowance
and



2179/1864-16

and asked for R.P. 15 and
that on that record Pff
was discharged. That the idols
belong to appellant and the
land too. and the settlement
with Plaintiffs father was only
nominal; that the Plaintiff
is not an architrave at all
but only a servant. that the
Plaintiff in 1854 brought a
suit for the recovery of certain
of the lands under Act 6 of
1840, which suit was dismissed
and that therefore the Plaintiff
is barred by statute of limitation
The Sudder Ameen has first
the question of the suit being
barred and considers that as
the Inferior Court did not
dispose of the Plaintiff by any
order hence that the limitation
of 3 years did not apply and
he therefore entertained
entertained that plea as immaterial
He then goes on to consider
the right of the parties and
as

as he considers that Plaintiff has proved his rights title to the lands both by documents and oral evidence he decreed the case in his favor against this order the present appellant lies.

The Vakil for appellant urges that according to Section 1 Clause 7 Act 14 of 1859, the case cannot be heard and in this I partly agree. In that clause it is laid down that suits by any person barred by any order affecting possession of property made under Act 14 of 1840, the period of 3 years from the date of final order & Section 8 makes the act applicable to all suits instituted after the expiration of two years from the date of passing of the act. The present suit having been instituted on 23 June 1862, is therefore governed by this act and according to Clause 7 Sec.

2179/1869-13

I consider that the suit so far as it relates to what was made the subject of the act & suit in 1852, must be barred. It is urged again by the Vakeel that the Plff having instituted a summary suit for rent against the Defdt (appellant) for 3 Biggas of land which suit was dismissed by the Deputy Collector on 9th November 1854, that it was incumbent on Plaintiff to bring a suit to contest the award within one year if brought at all, according to Section 8 Regn 8 of 1831, that the Plaintiff brought no such suit and that consequently he is barred now from bringing any suit. The present suit however is not brought to contest the award given on 9th November 1854, in a summary suit for rent. It is brought to recover possession of the lands of which

the Plaintiff was dispossessed in 1853, and I do not think the fact of the Plaintiff not having contested the award on a summary suit for rent bars him from his action to recover possession. It is admitted by the Defendant (Appt) that the Plaintiff's ancestor held the lands in dispute, that the lands were measured in the name of Plaintiff's grand father and the settlement of them made in the name of his father. Appellant says that this was benamee & that these persons were only servants of the idol but I dont see how his assertion on this point can override the proof afforded by the settlement papers in which no mention is made of any such arrangement. The Summons also under which Plff's claim has not been contested and the

Respt

3 pm

21-19/1864-10

right of the Plaintiff to the lands claimed appears to be to be as clearly shown as possible first by grant of Surrender not disputed. then by the lands being measured on Plaintiffs grand fathers name also without any objection then by the lands after enjoying being settled with Plaintiffs father partly as tenant and partly declared to be his Lawfully tenure, this also being done without any other claimant appearing & lastly by the appellants own admission of the truth of all this qualified only by the alleged statement that the whole of the above transactions were benamee and that all along appt and his ancestors were the real owners this allegation is of no avail against the proofs ~~mentioned~~ enumerated above. It now remains to be seen what

what formed the subject of the suit under Act 6 of 1860. The suit appears to have been for possession of 6 begas of land, the idols now sued for and the temple. This appears from the Plaintiffs own statement although in the claim made before the magistrate under the Act only the land and the temple were mentioned. The temple however must be considered to include the idols and in his deposition the Plaintiff says that he was at that time dispossessed of the idols as well as the temple. I do not think therefore that any order can pass with respect to these 6 Begas of land, the temple or its contents, but with the exception of the above I think the Plaintiff is entitled to a decree and I therefore affirm the order

H.H. Sen J. Jan 4
Reversed & decree in accordance herewith
J. Jed d.f. without costs
26 p

H.C.
C. Peale
R. Ashe
26 p

2179/1864-19

order of the Lower Court with the exception of the land and premises decreed to Defendant in the Deputy Magistrate's Court. —

Jos R. Alexander
Ch Judge

Lin Sp. Ms
Esq Sp Ms

75
1149

Special Appeal No. 2179 of 1864.

Date of filing. The 9th August of 1864.

Zillah Cuttack

Court of 1st Instance Sudder Ameen

Date of institution of suit 23 June 1863

Date of its decision 25 July 1863

Appellate Court Judge

Date of Appeal 1 Sept. 1863

Date of its decision 7 May 1864

Special Appellant Gungadhur Mahapatter & ors Defts

Vakeel. Babus Kally Prosunno Dutt & Ramchunder Sen

Special Respondent Ashbury Jugo Das Plff

Vakeel. O'Kinealy

Given to be

Translated. The of 186 .

translated. The of 186 .

The Sudder Ameens decision was translated in the Court of the Judge below. — The translation has been compared and found substantially correct. —

Military Orphan Press — No. 92 H — 16-6-64 — 1,000