

Lakshmi Dutt Vs. Gopal Dutt

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Court : Allahabad

Decided On : Mar-27-1974

Reported in : AIR1974All316

Judge : M.P. Mehrotra, J.

Acts : Limitation Act, 1908 - Sections 2(8) - Schedule - Articles 65, 113, 120, 140, 142 and 144

Appeal No. : Second Appeal No. 3524 of 1965

Appellant : Lakshmi Dutt

Respondent : Gopal Dutt

Advocate for Def. : L.M. Pant, Adv.

Advocate for Pet/Ap. : Yudhisthir, Adv.

Disposition : Appeal allowed

Judgement :

M.P. Mehrotra, J.

1. This is the plaintiff's appeal. The trial Court decreed the suit but the lower appellate Court dismissed it on the ground of limitation.

2. The brief facts are these: The plaintiff was appointed a Malguzar or Padhar of the Village Adhyali in the district of Almora in 1960. Formerly one Bal Mukund Sah was the Malguzar of the said village and he died in 1954. The plaintiff claimed to be entitled to the possession of the land in dispute on the ground that the said land was Padhanchari land attached to the office of Malguzar. Formerly, the land was held by Bal Mukund as the Malguzar and subsequently, the plaintiff on his appointment to the said office became entitled, to the same. The defendants-respondents were alleged to have been inducted into possession by Bal Mukund and to have been in permissive possession from the latter. With his appointment as the Malguzar in 1960, the plaintiff claimed to have become entitled to the possession of the land in dispute but as the defendants denied to part with possession, therefore, they were liable to be dispossessed and were also liable to pay damages for illegal occupation.

3. The defendants contested the suit. They claimed that through their predecessors they held the land for the last 80 years before the institution of the suit. It was denied that they held permissive possession from the previous Malguzar Bal Mukund. The possession was claimed to be hostile and the defendants claimed to be hissedars of the land in suit. The suit was alleged to be time-barred.

4. The trial Court decreed the suit on the basis of the following findings:--

(1) The plaintiff was entitled to the possession of the land in dispute by virtue of his appointment as the Malguzar. In other words, the land was in the nature of service tenure.

(2) The defendants did not have permissive possession of the land from Bal Mukund but held the same adversely since 1947-48.

(3) The defendants' claim to have been in possession of the land for 80 years prior to the suit was incorrect.

(4) The plaintiff or the previous Malguzar, Bal Mukund, did not have possession within 12 years of the date of the suit. However, the said fact did not matter as the

land belonged to the State.

(5) The defendants did not hold the land as hissedars. As stated above, it was Malguzari land, that is, land to which the Malguzar was entitled by virtue of his office.

(6) The defendants could acquire title by adverse possession only if their adverse possession lasted for at least 60 years as the land was owned by the State and the plaintiff was a rent-free tenant of the same. He did not hold any proprietary title in the same.

The lower appellate Court maintained the aforesaid findings except on the question of limitation. According to the said Court, the suit was time-barred under Article 142 of the old Indian Limitation Act. The 60 years adverse possession against the State was not complete, hence the State could evict the defendants but the plaintiff could not evict them as the rule of 12 years' limitation was applicable to his suit. It was observed,

'This suit, therefore, is clearly a suit by a person entitled to possession against a trespasser who entered into possession after forcibly dispossesses the predecessor-in-interest of the plaintiff.'

The suit was, therefore, dismissed as time-barred by the said Court.

5. In this second appeal, I have heard at length Shri Yudhisthir the learned counsel for the plaintiff appellant and Shri L. M. Pant, the learned counsel for the defendant-respondents.

6. Shri Yudhisthir's contention is that looking to the special nature of the suit plots with reference to the land tenures prevalent in Kumaun region, the defendants-respondents could not acquire any adverse title in the said plots. No one can acquire adverse rights against the Padhan because he is not the owner of the land. He holds the same on behalf of the State as service tenure i.e., in lieu of cash remuneration. The learned counsel placed reliance on the following passage from Stowell's Manual of the Land Tenures of the Kumaun Division (1954-Ed.).

'The Malguzar is thus primarily responsible for the revenue of his village or villages with the hissedars behind him. His remuneration (compare Section 144 of the Act) consists of either padhanchri land (held rent-free as a tenant of Government) or if the revenue of such land be not equivalent to 5 per cent, of the revenue of the mah-maal, then to a cess on the revenue to make up the 5 per cent. He is also exempted from service as a coolie, 'a distinction much prized.' as Mr. Pauw says.' (p. 109).

'As mentioned above the padhan's remuneration commonly takes the form of padhanchri land, which is held by him, rent and revenue-free, as sirtan of the State as hissadar (Cf. Mr. Pauw page 42); but where its revenue at the village rate would not be equivalent to 5 per cent, on the village jama, or where there is no padhanchari land, he receives a cash on the revenue to make up the 5 per cent. The padhanchari land is a very old institution in Kumaun. In Mr. Traill's time the padhan was remunerated 'by fees on marriages and a small portion of land set apart for the purpose.' Mr. Batten in somewhat vague rules left the remuneration to 'mutual agreement' or 'panchayat.' The padhanchari lands were made over rent-free according to the actual amount found to be held in that way; when there were none, he did not create any, except with the villagers' consent; but if the dues were 'too small' he allowed a money equivalent of about 6 1/4 per cent, on the revenue. At Mr. Beckett's settlements the remuneration was finally fixed at 5 per cent, in land or cash on the basis of the lands actually held. About the cash remuneration no difficulties arise; but about the land there are not infrequent disputes. Old maurusi padhan families often try to assert proprietary title or other special right in the land. It is improbable that in some cases the padhanchari land was originally part of the padhan's own family land, on which the revenue was remitted as his remuneration.

The modern principle, however, recognises no right in it beyond that of a rent-free tenancy and the land is strictly attached to the office, whatever family may hold the latter. The Board's order No. 704/11-18, of the 29th April, 1886, laid it down that a malguzar can do what he likes with padhanchari land for his lifetime, but on his death his successor must get all of it unencumbered.

Similarly Mr. Ross, Commissioner, in Bachua versus Ramua and others of Ladhali, Darn (order of 12th September, 1887), ruled that no one can acquire rights in such land adverse to the padhan; each succeeding padhan must succeed to it unencumbered. He can give it out to tenants during the term of his padhanship, but at his death or dismissal the rights of the tenants lapse,

In the famous Bhaltgaon, Talla Glwar case, which went on at intervals from 1834 to 1895, it was finally decided that the heirs of an ex-padhan (or series of padhans) cannot claim to hold the padhanchari land on payment of rent, however, long the family may have held it. The new padhan can evict them. In this village the padhanchari land was very extensive and valuable.

The final decision on this point was given by Colonel Grigg, Commissioner on the 14th May, 1895 (Nand Lal versus Musammat Dharm Sundari and others); but the parties were still fighting over possession, trespass, mesne profits, rent, etc. six or seven years later.'

The learned counsel further contended that the cause of action accrued to the plaintiff only on 5-2-1960 when he was appointed the Malguzar and the suit which was filed in 1962 was, therefore, within time. He further contended that the instant case should be distinguished from those cases where hereditary succession is involved : in the latter there is unity of title but in the instant case, there was no unity of title between the former Malguzar Bal Mukund Sah and the present Malguzar, the plaintiff. To emphasise the nature of service tenure, reliance was placed on Malayandi Appayyasami Naicker v. Midhnapur Zamindari Co. Ltd., 40 Mad LJ 537 = (AIR 1922 PC 154) and the Midnappore Zemindari Company, Limited v. Anpayasami Naicker, 41 Mad 749 = (AIR 1919 Mad 798 (2)).

7. In contesting a point made by Shri L. M. Pant, learned counsel for the respondents, based on the consequences of vesting under Section 5 of the Kumaun and Uttara-khand Zamindari Abolition and Land Reforms Act, 1960 as amended by U. P. Act No. 12 of 1965, Shri Yudhisthir contended that the office of Malguzar or the Padhan has not been abolished with the coming into effect of the said Act even though his function to collect the land revenue has ceased. The Padhan or the Malguzar performed other functions also such as police function

and he continues to perform the said functions. In this connection the learned counsel placed reliance upon the following passage from Stowell's Manual occurring at page 108:

'The padhan or malguzar -- 'Sadar malguzar' as Sir Henry Ramsay and Mr. Beckett called him--is the head of the village community, collects the revenue and is also a police officer; he manages the village common land and its affairs generally, subject to the approval of the hissedars, and provides coolies for carriage, etc., according to custom.

8. Shri L. M. Pant, learned counsel for the respondents contended that in this second appeal we must notice a new development which arose in consequence of the enforcement of the Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960 as amended by U. P. Act No. 12 of 1965. Section 4 provides for the vesting of all the rights, title and interest of hissedars in respect of Khaikari land in the State free from all encumbrances. Section 5 lays down the consequences of such vesting. The section and its Clause (a) have been relied upon by the learned counsel and, therefore, I am quoting the same below:--

'5. Consequences of acquisition or notification under Section 4. When a notification under Section 4 has been published in the official Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act the consequences as hereinafter set forth shall, as from the beginning of the appointed date, ensue with respect to the area to which the notification relates (hereinafter called the notified area), namely,--

(a) all rights, title and interest of hissedars in the khaikari land and its sub-soil in the notified areas including rights, if any, in mines and minerals shall cease and be vested in the State of Uttar Pradesh free from all encumbrances.'

Shri Pant's contention is that as the hissedars have lost their rights, title and interest in the land, their liability to pay the land revenue has also ceased and hence the Malguzar or the Padhan (as he is known in the Kumaun Division) has ceased to be entitled to the benefit of land as service tenure. He was so entitled

because he had to collect revenue from the hissedars and pay the same to the State. In other words, the plaintiff's suit, it is contended has ceased to be maintainable and in any case no effective decree can be passed after the promulgation of the said Act. Shri Pant next contended that the lower appellate Court was right in holding that Article 142 barred the suit. He contended that the plaintiff derived his title from his predecessor-in-interest, Bal Mukund, and, therefore, limitation began to run against the plaintiff from the year 1947-48 when the defendants began their adverse possession against Bal Mukund. Moreover, the plaintiff ceased to have the right to get back possession if the plaintiff and his predecessors-in-interest ceased to be in possession within the last 12 years of the date of the suit even though the rights of the plaintiff and his predecessor-in-interest flowed from the State and they be deemed to be entitled to the possession of the land in dispute on behalf of the State.

9. The crux of the matter lies in examining whether the lower appellate Court was right in its view that the plaintiffs suit was 'by a person entitled to possession against a trespasser who entered into possession after forcibly dispossessing the predecessor-in-interest of the plaintiff--' In other words, we have to decide whether the plaintiff in the instant case could be said to be deriving his title from the preceding Malguzar, Bal Mukund. In this connection the definition of the expression 'plaintiff' in the Indian Limitation Act may be examined. In the new Act, i.e., the Limitation Act, 1963, it has been defined in Section 2 (i). The definition runs as under:

'Plaintiff' includes-

- (i) any person from or through whom a plaintiff derives his right to sue;
- (ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative.'

The new definition is more comprehensive than the old definition in Section 2(8) of the Indian Limitation Act, 1908 where it was laid down,

' 'plaintiff' includes any person from or through whom a plaintiff derives his right to sue.'

However, in the instant case, it is the old Act which governs the relationship of the parties and we have to examine the position with reference to the definition in the old Act. This is so because of Section 31 (b) in the new Act which lays down:

'31. Provision as to barred or pending suits, etc. Nothing in this Act shall-

(a)

(b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.'

Admittedly, the suit was instituted in 1962 before the enactment of the new Act. How, can it be said that in the instant case the plaintiff derived his right to sue the defendants from Bal Mukund Sah, the previous Malguzar. In my opinion, it is possible to hold to that effect (sic). The plaintiff had been independently appointed in 1960 as the Malguzar to the said office and he has an independent right to sue the defendants for possession of the land. He does not derive his title or his right to sue from the previous Malguzar, Bal Mukund, in this view of the matter, I think, Shri Yudhisthir's contention is correct that the plaintiff had an independent cause of action on his appointment to the office of the Malguzar. Admittedly, during the regime of Bal Mukund the defendants had not perfected their claim by adverse possession. The finding of the courts below is that such possession started from 1947-48 and Bal Mukund died in 1956. It is a hypothetical question as to what would have been the position if a period of 12 years had expired during the lifetime of Bal Mukund. Between 1956 and 1960 there was no Malguzar and, therefore, there was none to sue the defendants for possession. In such a situation it is difficult to hold that the limitation was running against the plaintiff even though there was none between the said years capable of suing the defendants for possession. This view is in accord with the passage which has been extracted from Stowell's Manual in the foregoing portion of the judgment. In this connection a useful examination may be made of the cases where the courts have examined the question of adverse possession with reference to service tenure lands.

However, even though the discussion may be illuminating, still we have to bear in mind that the nature of service tenure lands or main lands is not the same. It varies according to the context and keeping in mind this aspect of the matter I go on to discuss the cases which have been cited before me. The Bombay cases are :

(1) Radhabai and Ram Chandra Konher v. Anantray Bhagvant Despande, ILR (1885) 9 Bom 198 (FB).

(2) Gulabbhai v. Bhagvan, AIR 1928 Bom 377.

(3) Tuka v. Ganu, AIR 1931 Bom 24.

(4) Swamirao v. Bhimabai, AIR 1932 Bom 464.

10. Except AIR 1928 Bom 377, all the three cases related to watan lands and in ILR (1885) 9 Bom 198 (FB) it was emphasised that the office of the watandars was hereditary office. Indeed, the Bombay Act III of 1874 regulating the appointment and functioning of watandars is styled as Bombay Hereditary Offices Act 1874. In this background the Full Bench in ILR (1885) 9 Bom 198 (FB) laid down that:

'In the absence of fraud and collusion, adverse possession for twelve years during the lifetime of one holder of service watan lands is a bar to succeeding holders.'

The correctness of certain observations of the Full Bench seemed to suffer a doubt on account of the observations of their Lordships of the Privy Council in *Madhorao v. Raghu-nath*, AIR 1923 PC 205. However, the Division Bench in AIR 1931 Bom 24 held that ILR (1885) 9 Bom 198 (FB) was not overruled by the Privy Council and laid down good law. The Division Bench laid down:

'In case of an absolute sale of watan lands, the adverse possession begins to run from the death of the alienor and if the succeeding watandar fails to recover possession within 12 years, he is barred and the succeeding watandars claiming title as heirs of the previous watandar are similarly barred.'

However, the basis of the said rule was made clear in these words:

'A succeeding watandar derives his title as son and heir of the watandar which is capable of being barred and extinguished by adverse possession.'

Lastly, the Division Bench held on the terms of the said statute of 1874 that the Collector can set aside unauthorised alienation, irrespective of the law of limitation.

11. In AIR 1932 Bom 464 a learned single Judge of the Bombay High Court followed the law laid down in AIR 1931 Bora 24 and held:

'As a succeeding watandar derives his title to the watan lands as heir of the preceding watandar, the period of adverse possession, which begins during the lifetime of the preceding watandar must be taken into account to determine the question whether the person who has continued in adverse possession has acquired a title as against the succeeding watandar by such possession.'

All these cases, therefore, proceeded on the basis that the succeeding watandar (succeeding according to the law of inheritance) derived his title and right from the preceding watandarr AIR 1928 Bom 377 was a case which arose under the Bombay Bhagdari Act, and it was held that the Bhagdari lands are amenable to adverse possession as any other property. Bhagdari Act is a completely different enactment and Justice Patkar himself emphasised his aspect of the matter at page 380. His Lordships observed:

'In the case of watan property, the State is really the owner, and the property is given for service whereas the reason of the enactment of the Bhagdari Act, was to protect Government in collecting the revenue from the village.'

Therefore, no useful purpose will be served by further discussing the said authority.

12. So far as the Madras cases are concerned, again the main aspect in all the said cases seems to be that the plaintiffs who sued for possession in the said cases were held to be heirs and successors of the predecessors who held the offices in question. In ILR (1918) 41 Mad 749 the case related to a palayam. Chief Justice Wallis followed the description of palayagars as given in Willson's Glossary and which description had been approved by the Judicial Committee in Naragunty

case (1861-1863) 9 Moor Ind App 66. Palayagars were 'originally petty chieftains occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount power, but seldom paying either, and more or less independent; but as having, at present, since the subjugation of the country by the East India Company, subsided into peaceable landholders.' The plaintiff in the case before the Madras High Court was setting up a claim on the basis that the alienation of the estate by his grandfather and father was invalid as the estate was held as service tenure and the holder had to render military and police duties, when called upon to do so. Therefore, it was contended that the estate was inalienable and the plaintiff was not bound by the acts of his grandfather and father. The suit was decreed by the trial Court but the High Court dismissed the suit holding that the rendition of military and police duties stood abolished before the alienation took place. The point was emphasised that 'an unsettled palayam in the presidency of Madras resembles a Zamindari, is hereditary in its character and is alienable for the debts of the previous holder or the holder for the time being, so as to bind the successors.' This is a feature which distinguishes the Madras case from the case before me.

13. In 40 Mad LJ 537 = (ATR 1922 PC 154) the Privy Council affirmed the judgment of the Madras High Court in ILR (1918) 41 Mad 749 = (AIR 1919 Mad 798 (2)), In fact, the appeal decided by the Privy Council was from the aforesaid judgment of the Madras High Court. Though the Privy Council held that the police service tenures were abolished in 1916 by the Government of Madras i. e. subsequent to the alienation by the plaintiff's predecessors (contrary to the finding of the Madras High Court in this respect), still it was held by the Privy Council that it was not proved that the palayam had in fact been held on police service tenure. The point is, however, not really material.

14. In Raja of Palghat v. Raman Unni, ATR 1918 Mad 675 the Division Bench examined the question with reference to a Stani under the Malabar Law. Again, the Division Bench emphasised the hereditary character of the Stani. It was observed :

'The next in succession is his own heir. The fact that in Stanoms, the strict rule of Marumakkatayam succession is not followed is no reason for saying that the successor is not the heir of the last stani. The important pre-requisite in all cases of Stanoms is that the first and other Stanoms should all be held by the members of the same family.'

In this context the Division Bench laid down :

'For the purposes of limitation stani is deemed to be the heir of his predecessors-in-office and is bound by defendant's acts of adverse enjoyment against the previous holder. The plaintiff cannot claim exemption from limitation on the ground that the suit was brought within 12 years of his succession to the Stanom.'

This case is, therefore, again distinguishable from our case on the ground that we are not concerned here with a situation where the plaintiff could be said to be an heir of the previous Malguzar, Bal Mukund.

15. In *Subramania Gurukkal v. Ammakannu Ammal*, AIR 1921 Mad 595 the case was one of hereditary succession, and, therefore, it was held that:

'Where lands constituting the emoluments of an office have been held by a person not entitled to the office for more than 12 years as an owner (and not as a mere mortgagee or lessee) he gets an absolute and indefeasible right thereto against all the succeeding office-holders also.'

Mr. Justice Spencer clearly stated:

'I am unable to accept the suggestion that each successive holder of the office gets on appointment a fresh right to sue to recover the emoluments. I think that Section 28 of the Limitation Act will operate to extinguish not only his right but also the right of all who claim to succeed him by virtue of an hereditary line of succession.'

(Emphasis mine)

The case is, therefore, distinguishable.

16. In *Rajagopala v. Ramasubramania* : AIR1935 Mad449 there is not much which can be said to be relevant to the present controversy as the dispute was really decided upon the basis that the plaintiff's suit could not succeed as his right to recover the office itself had become time-barred under Article 120 of the Limitation Act. However, it was laid down that suits to recover possession of an office which is not hereditary are governed by Article 120 of the Limitation Act. In a way it supports the view which I am taking in the instant case.

17. In *Ramalingam v. Veerabadraru* : AIR1935 Mad914 Mr. Justice Varadachariar laid down :

'A person remaining in possession of the lands adversely to an office holder of a service inam cannot thereby acquire a right to remain in possession even as against succeeding office-holders.'

Mr. Justice Varadachariar distinguished *Ganasambanda Pandara v. Velu Pandaram*, ILR (1900) 23 Mad 271 and thought that two other decisions of the Board reported in *Venkata Jagannadha v. Veerabadraraya*, AIR 1922 PC 96 and *Madhava Rao Waman v. Ragunath Venkatesh*, AIR 1923 PC 205 justified the conclusion which he reached. I think this is a direct case in support of the view which I am taking in the instant case. In the Madras case a distinction was made between the hereditary nature of the office and the emoluments in respect of such office being considered as a hereditary proprietary right. To quote from the said judgment:

'As will be seen from the preamble to Regulation 6 of 1831, the underlying idea is that these lands are attached to the office by the State as wages of the office holder for the time being and it will be scarcely correct to speak of the office-holder as having proprietary right or interest therein. It is one thing to say that the office is hereditary but another thing to say that the emoluments are held and enjoyed by the successive holders of the office in a kind of hereditary proprietary right. If the correct view is that the office holder for the time being is only entitled to the usufruct of the lands, it becomes intelligible why it has always been the policy of the law to prohibit alienation of these lands by the office-holder for the time being.....'

In our case it is not necessary to bring the said distinction because the office of Malguzar has not been shown to be hereditary in nature. The appointment is by selection. The instant case is, therefore, on a better footing than the Madras case.

18. In *Adinarayana v. Appan Srirangachariar* : AIR1941 Mad217 it was laid down :

'No doubt the alienation of a village service inam which is prohibited by the special law relating to such service inams, does not avail as against the succeeding office-holder in the sense that the possession of the alienee will not be adverse to the latter till he succeeds to the office; the same reasoning cannot be applied to ordinary temple service inams.

Public policy requires that even the transferor should not divest himself of the income from the land granted to him as inam subject to the condition of performing services of a public character, and therefore in cases of alienations of temple service inams which are void as being opposed to public policy and also to the provisions of Section 6(h), T. P. Act, the transfer must be regarded as being void from the date of the transfer; and the possession of the alienee must be deemed to be adverse from that date and it must continue to be adverse. The person who succeeds on the death of the alienor in such a case cannot be said to have acquired then only for the first time a right to the property. Even though he may not claim directly under the transferor, the property is one which was granted to his family, and there is that unity of title which disables the successor from claiming that adverse possession which has once begun to run ceases to affect him till the death of transferor. Consequently, a usufructuary mortgagee of temple service inam land can acquire by adverse possession a prescriptive right under the mortgage though it was void when it was executed.'

It will be seen that again the emphasis was that there was a unity of title which disabled the successor from claiming that adverse possession which had once begun to run ceased to affect him till the death of the transferor. The unity of title is said to arise because the property was one which was granted to the family and, therefore, the successor was bound by the acts of the pre-decessor. The case is easily distinguishable from the instant case.

19. In *Nilmony Singh v. Jasabandhu Roy*, ILR (1896) 23 Cal 536 it was held :

'The idol is a judicial person capable of holding property and the possession of the defendants, who profess to derive title not from the idol but ignoring its rights, must be taken to have become adverse to the idol from the dates of two alienations, and, although it is true that an idol holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or sebaite, yet that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned, on the ground of his not deriving title from any previous manager.'

The Division Bench emphasised the aspect on the basis of the Privy Council's judgment in *Prosunno Kumari Debya v. Golab Chund Baboo*, (1875) 2 Ind App 145 that the successive sebaits formed a continuing representation of idol's property. I think the cases relating to Defaulter property and the rights of the sebaite to recover the same are clearly distinguishable from the instant case. Here, there is no representation of the property by the successive office-holders. In fact, as emphasised in : AIR1935 Mad914 inani lands are in the nature of benefits attaching to the office as wages of the office-holder for the time being.

20. *Jagadindra Nath Roy v. Hemant Kumari Devi*, ILR (1905) 32 Cal 129 (PC) does not seem to be of much assistance as the point which arose there for decision related to the right of a plaintiff suing as a sebaite to avail of the benefits of Section 7 of the Limitation Act (1877). It was laid down that where a right of action accrues to a minor, the fact that his guardian might have maintained a suit on his behalf during his minority does not deprive him of the protection given to him by Section 7 of the Limitation Act. It seems that the Calcutta High Court in the judgment under appeal before the Board had emphasised that succeeding sebaits, in fact, formed a continuing representation of the idol's property, relying upon the dictum of the Board in (1875) 2 Ind App 145.

21. *Skinner v. Kunwar Naunihal Singh*, AIR 1929 PC 158 is similarly not of much assistance as the case relates to the interpretation of Article 134 of the Limitation Act.

22. Two Lahore cases have also been cited before me, Ghulam Muhammad v. Ahmad Khan, AIR 1920 Lah 209 and Gurdwara Committee v. Karam Singh, AIR 1930 Lah 46. Both these cases are distinguishable from the present case. In AIR 1920 Lah 209 the succession was from father to son. The land was granted in perpetuity and this aspect of the matter clearly makes the said case inapplicable to our case. AIR 1930 Lah 46 is similarly distinguishable on its own facts. The decision turned upon a distinction between the Jagir and Muafi and I do not think the said case is of any assistance in the present controversy.

23. In Sajib Mian v. Lango Uragon, AIR 1946 Pat 207 it was laid down:

'The lands in question originally belonged to the village community and were made over to the family of the pahan as reward of services in the past as also as a remuneration for services in the future as village priest. Usually the eldest member of the family took upon himself the execution of the duty of the village pahan and remunerated himself and his family from the usufruct of the lands, and so long as the family continued to have some member ready and willing to do the duties of the Village pahan, neither the community nor any member of it could interfere with the position of the pahan. In the absence of any election or nomination of each successive pahan, the property vested either in the family of the pahan or the village community as a whole. In either case, when the pahan for the time being alienated the pahan lands, there would be some person entitled to question the transaction of the transfer of the lands of such a tenure and hence each successive pahan did not get a fresh cause of action on his succession to the office. A suit for recovery of such lands alienated by the pahan brought more than 12 years after transfer would be barred by limitation. As the transaction in the present case took place more than 12 years before the institution of the suit it was barred by limitation.'

I think the distinction between the Patna case and our case is too evident to be much emphasised. The grant was to the family and the property vested either in the family of the pahan or the village community as a whole and, therefore, it was emphasised that if the pahan for the time being alienated the pahan land there would be some person to question the said transaction of the transfer of the land

of such a tenure and hence each successive pahan did not get a fresh cause of action on his succession to the office. This case again leads me to emphasise that it is the nature of the service tenures of inam lands with reference to the offices in respect of which they are granted, which should be considered, and there can be no generalisation covering every variety of such inam or service tenure lands.

24. In *Mohd. Isak Saheb v. Najarud-din*, AIR 1962 Mys 253 the Bench was concerned with Mullagiri inam lands. The Bench laid down:

'Mullagiri property like watan property governed by the Bombay Act III of 1874 descends by succession according to the personal law of the parties. Each succeeding holder derives title from the immediately preceding holder and the interests therein of the several holders are not in the nature of successive life or limited estates. But in the matter of alienation the said lands are governed, not by the provisions of Section 5 of the said Act, but by the terms of the relevant sanad according to which they are inalienable. When, therefore, a Mulla purports to alienate the property, the alienation is not valid for the duration of his lifetime but is void in its very inception. According to the normal principles applicable to such alienations, the alienee does not derive any valid title under or by virtue of the alienation, but if he continues in possession claiming title as owner, such possession is at once adverse to the real owner, the alienor. Possession which is so adverse to the alienating Mulla is equally adverse to the next succeeding Mulla claiming title under him and even if the alienating Mulla dies before the alienee has perfected his title by twelve years' continuous possession, he can, by continuing in possession for a further period necessary to make up the total of twelve years, perfect his title even against the succeeding Mulla. If he completes a period of twelve years of adverse possession during the lifetime of the alienating Mulla himself, the Mulla's title gets extinguished and there is nothing which the succeeding Mulla can inherit as his heir.'

This case again is distinguishable because Mullagiri property was held to descend by succession according to the personal law of the parties. There is no such descent of property rights by succession according to the personal law of the parties in the present case.

25. I, therefore, hold that the lower appellate Court was wrong in thinking that Article 142 was applicable to the facts of the case. In Article 142 the word 'plaintiff' occurred and it was laid down:

'For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.'

If I am right in my view that the expression 'plaintiff' will not take in Bal Mukund, the previous Malguzar in the instant case, then it cannot be said that the present plaintiff has been dispossessed or has discontinued the possession. Therefore, in my view, Article 142 did not apply to the facts of the case. The case will be governed by Article 120 or Article 144 of the old Limitation Act. In either case, the time from which the period began to run was the date on which the plaintiff was appointed the Malguzar i.e. on 5-2-1960. The suit is, therefore, within time whichever of the said two Articles be held to be applicable to the facts of the case. I have taken this view on the basis of the aforesaid discussion of the case law and this view is also in accord with what has been stated by Stowell in his Manual. Mr. Yudhisthir contended that the authority of Stowell regarding the laid tenures prevalent in the Kumaun Division has been recognised by this Court in decided cases and he brought to my notice two such cases i.e., Gaje Siagh v. Uchhaba : AIR1929 All223 and Jaint Singh v. Nand Ram : AIR1938 All136 .

I do not agree with Shri Pant that the appeal has been affected in any manner by the coming into effect of the Kumaun and Uttarkhand Zamindari Abolition and Land Reforms Act, 1960. It is true that under Section 5 (a) all rights, title and interest of the bissedars in the khaikari land and its sub-soil in the notified areas including rights, if any, in mines and minerals, shall cease and shall be vested in the State of Uttar Pradesh, free from all encumbrances. However, it is not clear how the said fact affected the plaintiff's rights in the plots in question. The fact that the liability to pay the land revenue has ceased does not ipso facto lead to the inference that the service tenure itself also has ceased. It has been brought to my notice that the Malguzar or the Padhan in the said hilly region performs other duties apart from the collection of land revenue. Hence it cannot be said that the service tenure has been also abolished. Moreover, whatever might be the claims

of the State against the plaintiff in respect of the land in question so far as the plaintiffs right to recover the said land from the defendants is concerned that cannot be said to be affected. We are not deciding the matter as between the State and the plaintiff. Unless the respondents could show that independent rights have been created in them by virtue of the said Act the plaintiff's claim cannot be defeated. It has not been shown to me that such rights have been created in favour of the defendants by the said Act. I, therefore, hold that the plaintiff's suit has not become infructuous due to the enforcement of the said Act.

26. Shri Yudhishtir also sought to raise a point that the finding of the courts below that the defendants' possession was not permissive was not borne out from the record. I do not think it is necessary for me to enter into that question in the view which I have taken about the rule of limitation governing this case.

27. In the result, the appeal succeeds and is allowed with costs.

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