

Ranjit Singh Vs. Radha Charan Chandra

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Court : Kolkata

Decided On : May-01-1907

Reported in : (1907)ILR34Cal564

Judge : Rampini and ;Sharfuddin, JJ.

Appellant : Ranjit Singh

Respondent : Radha Charan Chandra

Judgement :

Rampini and Sharfuddin, JJ.

1. 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 Jure, 1854, they are entitled to possession of these lands.

2. The lower Courts have given them a decree.

3. 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.

4. 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.

5. 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 then 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 Newaz Khoda v. Ram Jadu Dey* (1906) I.L.R. 34 Calc. 109 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.

6. 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 Article 113 and not by that prescribed by either Articles 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.

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

8. 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 Article 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