

Ram Chandra Singh Vs. Bhikhambar Singh

Ram Chandra Singh Vs. Bhikhambar Singh

SooperKanoon Citation : sooperkanoon.com/856485

Court : Kolkata

Decided On : Apr-04-1910

Reported in : (1910)ILR37Cal674

Judge : Brett and ;Sharfuddin, JJ.

Appellant : Ram Chandra Singh

Respondent : Bhikhambar Singh

Disposition : Appeal dismissed

Judgement :

Brett and Sharfuddin, JJ.

1. The present appeal arises out of a suit brought by the plaintiff to recover possession of lands which were given by way of khorposh or maintenance grant by Raja Madan Mohan Sinha, the grandfather of the plaintiff, to Hikim Gopal Sinha, the father of the defendants. Raja Madan Mohan Sinha had three sons, of whom the eldest was the plaintiff's father, and the second was Hikim Gopal Sinha, the father of the defendants. Under the custom observed in the Raj family of Joypore, the entire zemindary passed by the law of primogeniture, on the death of the Raja, to his eldest son, and grants by way of maintenance were made to the younger sons. Raja Madan Mohan died in 1858. The defendants father, the original grantee, Hikim Gopal Sinha, died in 1877, and the plaintiff's father, Raja

Kasi Nath Sinha, died in 1885. The present suit was instituted on the 14th June 1905.

2. The case for the plaintiff was that maintenance grants being for the support of the individual to whom they were made, terminated on the death of either the grantee or the grantor. Ordinarily, therefore, the grant of the lands in suit to the father of the defendants would have terminated in 1858 or 1877. But the case of the plaintiff was that, after the death of Raja Madan Mohan, Raja Kasi Nath, the father of the plaintiff, out of affection for his brother, allowed him to remain in possession of the lands in suit, and when Hikim Gopal Sinha, the father of the defendants, died in 1877, Raja Kasi Nath allowed the defendants to continue in possession; and that after the death of Raja Kasi Nath in 1885, the present plaintiff, Raja Bhikhambar Sinha, allowed the defendants to continue in possession. Lately, however, they had become adverse to the plaintiff, and, therefore, the plaintiff sought to resume the grant and to recover possession of the property covered by it.

3. The main defence set up by the defendants was that the grant was not a khorposh grant at all, but that the defendants and their father held the lands all along in jote lakhraj right.

4. Both the lower courts held that the case of the plaintiff was true, that the grant was a khorposh or maintenance grant, and that the suit was not barred by limitation, as the defendants father and afterwards the defendants had been allowed to remain in possession of the land covered by the grant after the death of the original grantor and after the death of the defendants father respectively.

5. The defendants have appealed to this Court, and the main point which has been argued before us is whether the suit is barred by limitation. It has been contended that, after the death of the defendants' father, the khorposh or maintenance grant, which created an estate for life only, came to an end, and the father of the plaintiff, as the reversioner, became entitled to the property, as his reversion then became an estate in possession; and it has been argued that Article 140 of the second Schedule of the Limitation Act applies to the case, that limitation commenced to run from the date of the death of the defendants' father, and that, as the suit was

not brought within twelve years from that date, it was barred by limitation. Reliance has been placed on the decision of this Court in the case of *Madan Mohan Gossain v. Kumar Rameswar Malia* (1907) 7 C.L.J. 615 to support the view that, if a lessee holds over after the expiry of the lease, time begins to run under Article 139 of Schedule II of the Limitation Act from the date of the expiry of the lease, and the cases of *Kanthappa Raddi v. Sheshappa* (1897) I.L.R. 22 Bom. 893 and *Chandri v. Daji Bhau* (1900) I.L.R. 24 Bom. 504 are also referred to as supporting the same principle. It has also been argued that the mere fact that the plaintiff's father allowed the father of the defendants and afterwards the defendants to remain in possession would not have the effect of converting their possession, which was wrongful, into rightful possession, so as to prevent limitation from running against the lessor, and it has been contended that the suit on this ground was barred by limitation. It has further been contended that the lands in suit were held by the defendants' father, and afterwards by the defendants, not as a maintenance grant, but as a *lakheraj* grant, and that this view is supported by Exs. A, B and C, three letters written by Raja Kasi Nath and the plaintiff to the defendants' father and to the defendants.

6. We have given our best consideration to these arguments, and we are of opinion that they cannot be maintained. In our opinion, the grant of lands made by the grandfather of the plaintiff to his son, the father of the defendants, was a grant of a tenure for the purpose of supporting the defendants' father out of its profits, such tenure to be held free of rent. Whether the grant would ordinarily be resumable on the death of the grantee or of the grantor would, in our opinion, be immaterial, if, after either of these events, anything occurred to indicate that the grantor or his successor acknowledged the person in possession of the tenure as entitled to continue in possession and enjoy the profits. We are prepared to admit that a tenancy by sufferance would not by itself make the possession of the holder rightful, so as to prevent limitation from running; but, at the same time, we are of opinion if the landlord or the person entitled to resume the tenancy does anything to indicate his assent to the continuance of the tenancy, that would itself be sufficient to convert the tenancy by sufferance into a tenancy from year to year. We think that, in the present case, there is sufficient indication that there was on the part of Raja Kasinath Sinha, and, subsequently, on the part of the plaintiff

himself, such an assent to the continuance of the tenancy as would have the effect of converting the tenancy by sufferance into a rightful yearly tenancy. We think that the letters, Exs. A, B and C, are in themselves sufficient to indicate that there was such assent, and there is the further circumstance that the parties in this case are near relatives and, therefore, there was a strong reason why, on the death of the original grantor, his son should have allowed the grant of the tenure to continue to the original grantee, and on the death of the original grantor, the same person should have allowed the grant to continue to the present defendants. We are of opinion that the contention advanced on behalf of the defendants that the grant was a lakheraj grant and not a grant for maintenance cannot be supported. The question whether a grant is a maintenance grant or not is, moreover, in our opinion, a question of fact, which has been decided by the lower Courts on the evidence. We are of opinion, therefore, that the contention advanced on behalf of the appellants must fail, that the limitation applicable to this case is that provided by Article 139 of the second Schedule of the Limitation Act, and that Article 140 of the same Schedule has no application. We are of opinion that the lower Courts were right in the view which they took that the grant, by reason of the assent of the grandfather and the father of the plaintiff and the plaintiff himself, was continued to the defendants' father, and, after the death of the defendants father, to the defendants, and, therefore, there was no adverse possession on their part which would be sufficient to bar the plaintiff's suit. We agree with the lower Courts that the plaintiff is entitled, in the circumstance stated, to the reliefs granted, and We, therefore, dismiss the appeal with costs.