

Ram Chand Dutt and ors. Vs. Robert Watson and Co., Ld.

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Court : Kolkata

Decided On : Apr-08-1896

Reported in : (1896)ILR23Cal799

Judge : Ghose and ;Gordon, JJ.

Appellant : Ram Chand Dutt and ors.

Respondent : Robert Watson and Co., Ld.

Judgement :

Ghose and Gordon, JJ.

1. The plaintiffs and the defendants are co-sharers in a joint estate. The defendants took possession of, and exclusively cultivated, 4,128 bighas of the joint lands. Thereupon the plaintiff's brought a suit for the recovery of joint possession with mesne profits and for an injunction.

2. After trial in the Courts in India, the case went up to the Privy Council, and the Judicial Committee (see I.L.R. 18 Cal. 10) held that the plaintiff's were not entitled to either of the two remedies claimed by them, but that they were entitled to recover from the defendants compensation by reason of the exclusive use of the lands by the defendants, and the benefit derived by them; and they accordingly awarded to the plaintiffs compensation at the rate of two-thirds of 7 annas per bigha a year, that being commensurate with their share of the ijmal lands.

3. We might here mention that the mesne profits that were claimed in that case were in respect of the years 1291 to 1293 Pous Amli; the present suit is for compensation for the years 1293 to 1300 Cheyt.

4. It would appear that all the plaintiffs are jointly entitled to 1 anna 6 gundas 2 cowries 2 krants share of the property; and that the plaintiffs Nos. 2 to 4 are exclusively entitled to an 8 annas share; and they joined in bringing the present action for compensation in respect of their shares.

5. The main points raised by the defendants in their defence in the Court below were : (1) misjoinder of parties; (2) limitation as to a portion of the claim; and (3) possession of certain lands in the zemindari being enjoyed exclusively by the plaintiffs, they were not entitled to any relief until and unless, deduction was allowed in respect of the income of those lands.

6. The Court below disallowed the plea of misjoinder; it held that, so far as the claim in respect of the years 1293 to 1296 was concerned, it was barred by the law of limitation; and that the plea as to the plaintiffs being possession of certain other lands being practically a plea of set-off could not be entertained under Section 111 of the Code of Civil Procedure; the result being that the suit was decreed for a portion of the claim, with interest at the rate of 12 per cent, per annum upon the amount of compensation of each year calculated from the beginning of the year next to that for which such compensation was allowed.

7. Against this decree, both parties have appealed to this Court. The appeal No. 349 is by the plaintiffs, and the other appeal No. 329 is by the defendants.

8. The first contention that has been raised before us by the learned vakil for the defendants is that the suit should have been dismissed for misjoinder of parties. We are unable to give effect to this contention, because, looking at Section 578 of the Code of Civil Procedure, it seems to us that the error on the part of the lower Court, if there was any error in this connection, did not affect the merits of the case. It is quite clear that the plaintiffs were, as between themselves, entitled to compensation to the extent of 9 annas 6 gundas 2 cowries 2 krants share, though there is, so to say, a definition of shares as between themselves, all the plaintiffs

being jointly entitled to 1 anna 6 gundas 2 cowries 2 krants, while the three plaintiffs 2 to 4 are entitled to an eight annas share exclusively. The joinder of these two sets of parties in' the same suit could not, and did not, as it seems to us, affect the merits of the case; and we are not prepared to say that the error, if there was any, on the part of the Court below in allowing the suit to be presented upon one and the same plaint is such as affects the merits of the case.

9. The learned vakil for the defendants has contended that under Article 115, Schedule II, of the Indian Limitation Act, the period of limitation in respect of a claim like this is three years; and, therefore, the suit, so far it seeks to recover compensation for the year 1297, is barred by limitation.

10. He has further argued that the act of the defendants in taking exclusive possession of the ijmal lands was an act either of malfeasance or misfeasance, falling within the purview of Article 36 of the Limitation Act; and, therefore, if the limitation prescribed by that article be applicable, the ,plaintiff's' claim for the years 1297-1298 is barred. We do not, however, think that either of these contentions can be sustained. Article 115 runs thus: 'For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for, the period of limitation is three years, when the contract is broken, (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.' Now, was there any contract on the part of the defendants when they entered into possession of the ijmal lands- contract either express or implied? We are unable to see how there could be any contract of the kind, having regard to the position occupied by the two parties, as has been declared by their Lordships of the Judicial Committee in the previous case. It will be found on a reference to the judgment of the Privy Council that their Lordships regarded the parties as tenants in common, one of them being in the actual occupation of a, portion of the joint lands, and being engaged in a proper course of cultivation of that portion as if it were his separate property; and they held that the plaintiffs were neither entitled to get joint possession of the lands which were in the exclusive possession of the defendants, nor to a decree for injunction. What they thought the plaintiffs were entitled to was simply compensation in respect of the exclusive use and benefit

enjoyed by the defendants in respect of the lands in their possession.

11. In this view of the position of the two parties, it seems to us that Article 115 can have no application; nor do we think the other article referred to by the learned pleader for the appellant (article 36) is applicable; for when the defendants, being tenants in common with the plaintiffs, exclusively occupied portions of the ijmal lands, they could not be regarded as doing any act of malfeasance, misfeasance or nonfeasance, within the meaning of that article. These two articles, Nos. 115 and 36, being left out, we have to see whether there is any other article in the Limitation Act applicable to this case. The learned vakil for the appellant has failed to point out to us any such article; and it seems to us, as has been contended by the learned vakil for the plaintiffs, that the only article which may be taken to apply to this case is Article 120 which prescribes a period of six years. We think, therefore, that the contention of the defendants, namely, that three years' limitation is applicable to this case, cannot be supported.

12. We ought here to mention that the Subordinate Judge, in holding that the limitation applicable to this case is three years', evidently proceeded upon the idea that the defendants occupied the position of tenants to the plaintiffs, and, therefore, as between landlords and tenants, the limitation applicable was three years. We are, however, unable to accept that position as correct. Having regard to the view expressed by the Judicial Committee, to which we have already referred, the defendants could not be regarded as occupying the position of tenants to the plaintiffs. They were tenants in common with the plaintiffs; but they had exclusive enjoyment of certain ijmal lands, and were therefore bound to pay to the plaintiffs compensation for such exclusive use and enjoyment.

13. The next ground that has been raised before us on behalf of the defendants is one as to interest. The Court below has allowed the plaintiffs interest at the rate of 12 per cent, per annum from the end of each year. We think that under the circumstances of this case, having regard especially to the fact which appears upon the evidence, namely, that the plaintiffs also are in possession of certain ijmal lands (the area or situation is not clear), it would not be right and proper to give the plaintiffs interest upon the compensation allowed at the high rate of 12 per

cent, per annum. We reduce the interest to 6 per cent, per annum.

14. These are the only points that have been raised and discussed before us by both sides; and they being disposed of, the result would be that the appeal of the defendants No. 329 should be dismissed, except as regards the rate of interest; while that of the plaintiffs (No. 349) should be partially allowed, it being decreed that save and except the claim for the years 1293 and 1296 (from Assin to Cheyt) the plaintiffs will be entitled to recover compensation from the defendants for the rest of the period comprised in the suit, with interest at the rate of 6 per cent, per annum from the end of each year.

15. The parties will be entitled to their costs in proportion to the amount decreed and disallowed.

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