

PRIVY COUNCIL

Maharaja Ranjit Singh Bahadur

Vs.

Maharaj Bahadur Singh

P.C.A. No. 83 of 1915

(Lord Buckmaster, CJ, Sir John Edge, Mr. Ameer Ali, Sir Walter Phillimore, and
Bart. JJ)

30.5.1918

JUDGMENT

Lord Buckmaster CJ.

1. This is a consolidated appeal against seven decrees of the High Court of Calcutta, dated the 5th March, 1913. These decrees were made in seven suits instituted by the respondent on the 10th and 20th September, 1904, against the appellant and others claiming to recover possession and settlement of certain *chaukidari chakaran* lands in villages of which the appellant is the *zamindar*. It is unnecessary to deal with the history and vicissitudes of the litigation, as the only question that now arises for determination is whether the suits were barred by the Indian Limitation Act, 1877. This statute, as is well known, fixed different periods of limitation within which suits of different characters should be brought. The appellant contends that Article 113 of the 2nd Schedule of that statute regulates the rights of the parties in the present case, while the respondent asserts that the period is fixed by Article 144 of the same Schedule. By the terms of the Schedule, Article 113 is stated to apply to a suit for specific performance of a contract, the period of limitation is fixed at three years and the time from which the period begins to run is stated to be the date fixed for the performance, or if no such date is fixed, the date when the plaintiff has notice that performance is refused. Article 144, on the other hand, relates to a suit for possession of immovable property or any interest therein not thereby otherwise specially provided for the period is twelve years, and the time from which the period begins to run is when the possession of the defendant becomes adverse to the plaintiff. If Article 113 applies, the appellant is entitled to succeed. But it is admitted that he must fail if Article 144 prescribes the true period.

2. The circumstances out of which the action arose can be briefly stated. The respondent is the *patnidar* of half and *darpatnidar* of the other half of the village of Gopalpur, and is *patnidar* of six other villages, all of the said villages being within the *zamindari* of the appellant. Some of the lands in these villages included in the *patnis* and the *darpatnis* were originally held as *chaukidari chakaran* lands, but in June 1898 these lands were all resumed by the Collector under the Bengal Act VI of 1870, and then transferred to the appellant. It is unnecessary to state the history of these lands, the circumstances attaching to their tenure and the respective rights of the parties when they were resumed by the Collector, for all these matters have been fully dealt with in a judgment of this Board in the case of *Raja Ranjit Singh v. Kali Dasi Debi*¹. It was there decided that upon such resumption and transfer to the *zamindar* as is provided by the Bengal Act VI of 1870, the *Patnidar* or the *darpatnidar* is entitled under section 51 to possession of the *chaukidari chakaran* lands. That right depended upon the interpretation given by the Board to section 51 of Act VI of 1870. This section operates to transfer the land to the *Zamindar*.

"Subject to all contracts therefore made in respect of, under, or by virtue of which any person other than the *zamindar* may have any right to any land, or portion of his estate or tenure in the place in which such land may be situated."

3. Lord Parker in delivering the judgment of the Board, while commenting upon the fact that these words were not happily chosen, expressed the opinion that their obvious intention was to preserve the rights of third parties. He said.

4. They contemplate a case, in which the village in which the resumed lands are situated has been made the subject of a contract by the *zamindar* or those through whom he claims, and that under this contract some third party may have interest in the lands resumed. They are wide enough to include, and in their Lordships' opinion do include, the rights of a *patnidar* under a *patni* grant by virtue of which the *patnidar* is lessee of the *zamindar* interests in the lands resumed, and also the rights of a *darpatnidar* under a *darpatni* grant."

5. There is, therefore, no longer any question as to the right of the respondent to the lands, but the appellant's contention is that as the rights of the *patnidar* are reserved under the words referred to they must be assumed to be contractual rights, that consequently a suit to enforce those rights must be a suit for specific performance, and that the date from which the statute begins to run must be the date of the grants to the *zamindar*. Their Lordships are unable to accede to this contention. It does not follow that because the rights originally arose by virtue of a grant declared to be a contract

within the meaning of section 51 they are therefore rights, contractual in the sense that the contract by its terms creates and regulates the personal obligations and duties of the grantor in the circumstances that have arisen. At the time when the *patni* grants were made the resumption of the *chaukidari chakaran* lands was not even contemplated, and the grant necessarily contains no reference whatever to the circumstances that would arise and the relationships that would exist in the event of the Government resuming possession. Upon resumption of such possession the rights of the *patnidar* were those conferred on him by the estate and interest created by the *patni* leases, and it was these rights that were kept alive by section 51 of Act VI of 1870 of the Bengal Council. It is only necessary to examine the words which prescribe the date from which the period begins to run in Article 113 of the second Schedule of the Limitation Act to show the difficulties in the way of any contrary contention. This date, as has already been pointed out, is either the date fixed for performance or the date when the plaintiff has notice that performance has been refused, but no date whatever has been fixed for performance in such a case as the present, either by the original grant or by the terms of the statute, nor has there been any refusal to perform a contract, for there was no unexecuted contract which had to be performed. A suit for specific performance is essentially a suit for enforcing a stipulated obligation relating to property. The word "contract" itself primarily means a transaction which creates personal obligations, but it may, though less exactly, refer to transactions which create real rights. It is in this latter sense that the word was used in Section 51, and the rights thereby reserved to the *patnidars* comprehensively included in the word "contracts," are real rights, the enforcement of which is secured not by a suit for specific performance but by a suit for possession, and it is this which, in their Lordships' opinion, is the character of the suits in the present case.

6. From this it follows the period of limitation is that fixed by Article 144; consequently the judgment appealed from is in their Lordships' opinion correct, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

Appeal Dismissed.

Cases Referred.

1. [1917] 44 Cal. 841 : 40 I.C.981 : 44 I.A.117 (P.C.)