PRIVY COUNCIL

Kunwar Rajendra Bahadur Singh

Vs.

Rai Rajeshwar Bali

Privy Council Appeal No. 86 of 1935
(Lord Russell Of Killowen, J. Sir Shadi Lal and Sir George Rankin JJ.)

18.06.1937

JUDGMENT

SIR GEORGE RANKIN J.

1. On 3rd November 1930, the appellant, acting under Chap. 7, United Provinces Land Revenue Act, 1901 (herein called "the Act"), presented in the Court of the Assistant Commissioner of Bara Banki an application for partition to which the first respondent filed objections. The case was tried as a suit under section 111, sub section (3) of the Act and on 16th November 1931, the Assistant Commissioner dismissed the application with costs. The appellant under Section 112 of the Act, read with Section 39, Oudh Courts Act, 1925, had a right of appeal from this decision either (a) to the Court of the District Judge within 30 days (Article 152, Schedule 1 to the Indian Limitation Act, 1908), or (b) to the Chief Court within 90 days (Article 156) according as "the value of the original suit" did not exceed Rupees 5,000 or was in excess of that amount. On 17th December 1931, he brought his appeal in the Court of the District Judge valuing the appeal at Rs. 1,000. At the hearing on 9th April 1932, objection was taken to the competence of the appeal on the ground that the true value was in excess of Rs. 5,000 ; and on 22nd April 1932, the District Judge upheld this objection and directed that the memorandum of appeal be returned to the appellant for presentation to the Chief Court. This order was not appealed from : the appellant on 25th April presented a memorandum of First Appeal to the Chief Court but as the 90 days allowed had elapsed in February he presented with his appeal an application for extension of time under section 5, Lim. Act. This application was dismissed by the Chief Court on 21st March 1934, and by a decree of the same date the appeal was dismissed as barred by limitation. On 26th March 1935, the Chief Court certified that the case was fit to be taken on appeal to His Majesty in Council. The sole question

before the Board is whether the learned Judges of the Chief Court were right in dismissing the application made to them under section 5, Limitation Act. By that section an appeal may be admitted after the period of limitation proscribed therefor, when the appellant . . . satisfies the Court that he had sufficient cause for not preferring the appeal .... within such period.

2. Upon the footing that the appeal lay to the Chief Court, the appellant cannot be charged with dilatoriness as he challenged the Assistant Commissioner's decision within a month : nor can respondent 1 in view of that challenge be regarded as having on the expiry of the 90 days more than a conditional right to treat the appellant's suit as at an end. It is not disputed that in valuing the suit for the purposes of his appeal the appellant acted in good faith on the advice of counsel honestly given. Indeed the error is not shown to be attributable to bias : the court-fee on the appeal (as Mr. DeGruyther with complete fairness pointed out) would be the same in either Court - viz., ten rupees; and the appeal was brought in the Court which required the greater degree of diligence. The Chief Court's refusal to admit the appeal was based on the view that counsel "did not exercise due care and attention and acted with gross negligence in the matter." If this opinion be correct, their Lordships will assume that in the present case it would suffice to justify the dismissal of the appeal. It clearly involves however that the view taken was not such as could have been entertained by a competent practitioner exercising reasonable care.

3. The "suit" which has to be valued under Section 39(1) (a), Oudh Courts Act, 1925, is that which was brought on a prescribed form by the application of 3rd November 1930. That document purports to be an application for partition of the village Daryabad. A scrutiny of the entries under the different headings of this form shows that by some entries the whole village is brought within the scope of the claim, while by the entries under the fourth heading and by the remarks under the tenth, the purpose of the application is described in a more limited manner. The application was certainly unusual and the product of exceptional circumstances : the Assistant Commissioner who dismissed it does not seem to have thought it very sensible; but the appellant's object is clear enough. The village Daryabad was assessed to revenue as six separate "mahals" or units of assessment. One of the six mahals was Mahal Harha and the khewat showed this as comprising 452 bighas belonging to the appellant, 19 belonging to Government, and 196 as "shamilat of the owners of the village". The "shamilat" or common land which was assessed as part of this mahal was really the "abadi" or residential portion of the village, and on it were houses and

buildings belonging to the first respondent, to the appellant and to others. The appellant's 452 bighas were entered as khata No. 1 of the khewat and the shamilat as khata No. 3, khata No. 2 being the Government land. Apart from Government land the other mahals of the village comprised the several lands of the first respondent and other owners, and in some cases land common to the proprietors of the mahal. The appellant's predecessor-in-title had in 1907 attempted to get partition of the shamilat in khata No. 3 of Mahal Harha, and to confine that mahal to his own land and Government's, relegating the abadi land of other proprietors to other mahals.

4. The first respondent had objected and had been required to assert his objections by suit in the civil Court. This suit he brought in 1909: it was referred to arbitration and resulted in an award of 1911 which declared that the first respondent was in possession of more than his share of the abadi but should retain possession on condition of compensating the appellant's predecessor out of his cultivated land. The District Judge on 14th August 1911 had refused to set aside the award and had made a decree in terms of it; an appeal to the Court of the Judicial Commissioner was dismissed in 1915. Meanwhile-on 5th June 1912 - the original application of 1907 for partition of khata No. 3 was dismissed for default. Not having obtained either his proper share of the shamilat or any other land in lieu of the deficiency, the predecessor of the appellant had applied in 1923 to have the award carried out by the partition officer and had asked for compensation out of the lands of mahal Rampur, but in 1929 the proceedings had been quashed under Section 109 of the Act by the Deputy Commissioner whose order the Commissioner affirmed. Their view was that a mahal like Mahal Rampur belonging exclusively to the first respondent could not be partitioned at the instance of one who was not a co-sharer therein. When to get over this difficulty leave was asked to amend so as to include the entire village in the application, leave was refused. An appeal to the Board of Revenue was dismissed on 24th January 1930.

5. By the application now in question the appellant on 3rd November 1930 had returned to the attack, and his predecessor's experience at the hands of the Revenue authorities explains certain peculiar features of his application. In particular it accounts for the fact that the application speaks with two voices-one claiming partition of the village and one asserting that the land to be partitioned was khata No. 3 of Mahal Harha and that the rest of the village including Mahal Rampur was included "for the purposes of recovery of compensation." The Revenue Authorities had hitherto refused relief saying "You cannot get it without partition and you cannot get it by

partition." The appellant framing his case afresh was saying: "The village is still in theory partitionable. I only want my rights in respect of the shamilat of khata No. 3 and it is still possible to give me other land by way of owelty." The appellant's views upon the nature of the village Daryabad and the opinions of the Revenue Courts as to the impossibility of giving him land by way of compensation disclose a dispute which their Lordships are not called upon to decide. But their Lordships will assume that if the appellant's case had to be put in form as a claim to have partition of village Daryabad the proper way in which to value it for purposes of jurisdiction would be to ascertain by the appropriate method the value of the appellant's whole interest in the village, which value would far exceed Rs. 5,000. Even so, however, they see no proof of negligence in the fact that counsel took another view of the application and the value to be assigned to it. The ordinary purpose of partition is to alter the mode in which rights to immoveable property are held and enjoyed; to convert a joint right in certain land into a several right in a portion thereof. The appellant's land in khata No. 1 of Mahal Harha had been his in severally throughout and he had no occasion to obtain an alteration in the mode of his enjoyment or possession. It was abundantly clear upon the face of his application that he had no desire to affect any land of the first respondent beyond obtaining compensation for the land which the first respondent was enjoying in the shamilat in excess of his share. In these circumstances it does not appear to their Lordship's that the view taken by the appellant's counsel was unreasonable or that he can be deemed to have been negligent in valuing the appeal: to describe his action as "gross negligence" is in their Lordships' view to visit him with a censure undeserved.

6. The question of negligence being out of the way, their Lordships are of opinion that the facts of the present case disclose sufficient cause within the meaning of Section 5 Limitation Act. They are of opinion that in applying Section 5 to such a case as the present, the analogy of section 14 (which applies only to suits) is an argument of considerable weight. Mistaken advice given by a legal practitioner may in the circumstances of a particular case give rise to sufficient cause within the section though there is certainly no general doctrine which saves parties from the results of wrong advice. In the circumstances of this case the respondents had very little reason to complain of the delay and the *bona fides* and diligence of the appellant cannot be impugned. The case is well within principles previously acted on by the Board, *Brij Indar Singh v. Kanshi Ram,* and *Sunderbai v. Collector of Belgaum,* Their Lordships will humbly advise His Majesty that the appeal should be allowed, the order and decree of the Chief Court set aside, and the appeal remanded to the Chief Court for

admission notwithstanding that the period of limitation was exceeded and for disposal accordingly. Their Lordships make no order as to costs in the Chief Court, but the first respondent will pay the appellant's costs of this appeal.

Appeal allowed.

Cases Referred.

AIR 1917 PC 156=42 IC 43=44 IA 218=45 Cal 94=104 PR 1917 (PC):

AIR 1918 PC 135=52 IC 897=46 IA 15=43 Bom 376 (PC).