CALCUTTA HIGH COURT

Jharula Das

Vs

Jalandhar Thakur

(Coxe and Imam, JJ.)

12.03.1912

JUDGMENT

Coxe and Imam, JJ.

1. This was a suit brought by one Bhaiji Thakur for recovery of 11 bighas of lakheraj land and an interest of 3½ annas in the income derived from offerings in a certain temple. The property originally belonged to one Pratipal who was a shebait ¾ of the temple, and was succeeded in that office by his widow, Girimoni. Girimoni sold the land to the defendant, Jharula Das, in 1282. Previously in 1281 she had mortgaged some other land and her interest in the temple income to the defendant. He sued on, the mortgage and obtained a decree on the 24th" September 1880. This was before the Transfer of Property Act, and seems to have been no more than an ordinary decree for money. In execution he put up the temple income for sale and bought it himself. He obtained delivery of possession in 1892. Girimoni and the present plaintiff then sued to have the sale set aside on the ground, among others, that the property was not alienable, and in the alternative for a declaration that it would not bind the present plaintiff after Girimoni's death. That suit was ultimately withdrawn with liberty to sae again. Girimoni then sued again, and that suit was dismissed, being held to be barred by Section 211 of the then Code. Girimoni then died, and this suit has now been brought by the present plaintiff. It was decreed by the learned Subordinate Judge, and the defendant appeals.

2. As regards the lakheraj land, we have no hesitation in maintaining the decision of the learned Subordinate Judge. That was voluntarily alienated by Girimoni, and the view of the learned Subordinate Judge that there was no legal necessity for any of these transactions has not been contested before us. With respect to this property Girimoni had the ordinary interest of a Hindu widow and not that of a Shebait, and the land was not the subject of the former suits. The only question therefore that has been argued before us with respect to the land is whether the evidence justifies the findings of the learned Sub ordinate Judge, that Girimoni died within 12 years of the suit, and that the present plaintiff is the next reversioner. After reading the evidence we have no doubt at all that the decision of the court below on these two points is correct.

3. The main question in the appeal is whether the suit, so far as it relates to the temple income, is barred by (i) limitation and (ii) the rule of res judicata. It appears to ns that both these questions turn on the point whether Girimoni fully represented the estate, and 'this point appears to us to be

concluded by authority. It cannot be contended for a moment that there was any collusion or dishonesty about the former suits. In one of them the plaintiff himself was a party. And that the decision of a suit, fairly conducted, against a widow binds the reversioners is now well settled (see the cases quoted on page 631 of the 6th volume of the C.L.J.) And when the widow occupies the position of a shebait, as in this case, it appears that her sex makes no difference. This was held in *Pydigantam Jagannadha Row v. Rama Doss Patnaik*[1] which was followed in *Lilabati Misrain v. Bishun Chobey*[2]

4. There is also authority that decrees against shebaits in honest suits bind their successors. The reason of this is explained in *Prosunno Kumari Debya v. Golab Chand Baboo*[3] *Gora Chand Lurki v. Makhan Lal Chakravarti*[4] *and Lilabati Misrain v. Bishun Chobey*[5] quoted above. That reason is that shebaits with their predecessors and successors form one continuous representation of the idol, and consequently subsequent shebaits are regarded as the same persons in law as their predecessors. If that is so, it seems clear that the plaintiff is bound by the decree passed against the predecessor Girimoni. It is argued that the validity of the defendant's purchase was not decided in that case, which was dismissed on the ground that it was barred by Section 244 of the then Code. But if the plaintiff is regarded as the same person in law as Girimoni, this argument must fail. Girimoni, if she liked, could have attacked the sale under Section 214 of the Code, and in that event would very probably have won her case. But she advisedly preferred to abandon that line of attack and to rely on a regular suit in which course she was aided and assisted by the plaintiff. Naturally it was held that the suit was barred. But when she had taken this unsuccessful course with her eyes open, she certainly could not' thereafter have pleaded that her right to recover the property had not been decided--and that she was entitled to bring another suit for the purpose of recovering it. And if the plaintiff is regarded by the eye of the law as the same as Girimoni, it is evident that he cannot do so either, more especially perhaps when he aided Girimoni to bring the unsuccessful suit. It appears to us that the right of the shebaits generally to recover the property was finally extinguished by the decision in the former suit.

5. It is clear also that the adverse possession runs from the delivery of possession to the defendant, and that the suit is long barred. The case clearly comes under Article 124 of the Schedule to the Limitation Act: see *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*[6] In that case the contention that a subsequent shebait obtained a fresh start in the calculation of adverse possession was distinctly overruled. The case of *Pydigantam Jagannadha Row v. Mama Doss Patnaik*[7] quoted above, which was followed in *Lilabati Misrain v. Bishun Chowbey*[8] seems to us quite indistinguishable from this case, and is a clear authority that the suit is barred by Article 124. We have been referred also to *Veerabhadra Varaprasada Row v. Vellanki Venkatadri*[9] in which it was held following the Full Bench decision in *Badhabai v. Anantrav Bhagvant Deshpande*[10] that in a suit for the income of a hereditary office a preceding holder fully represents his successors in matters of res judictta and limitation.

6. We need not go into the question how the rights of the plaintiff are affected by the fact that his own suit was withdrawn. It appears to us that when it is clearly proved that the defendant has been in possession of the property in suit since 1892, and that a suit by the then trustee of the property for recovery was finally dismissed in 1898, the present suit, so far as it affects the 3½ annas of the shebaiti, is barred both by limitation and by the principle of res judicata. Accordingly the appeal will be allowed in part. The decree of the Subordinate Judge so far as it directs the recovery of possession of the 11 bighas with mesne profits from the date of the suit, to

be hereafter ascertained, is affirmed; and so far as it relates to the shebaiti and the profits arising therefrom, is set aside.

7. Costs of both Courts will be awarded to the respective parties in proportion to their success, the calculation being based on the valuation of the relief sought in the plaint.

Cases Referred.

1(1904) I.L.R. 28 Mad. 197
2(1907) 6 C.L.J. 621
3(1875) 14 B.L.R. 450, L.R. 2 I.A. 145
4(1907) 6 C.L.J. 404
5(1907) 6 C.L.J. 621
6(1899) I.L.R. 23 Mad. 271 : L.R. 27 I.A. 69
7(1904) I.L.R. 28 Mad. 197
8(1907) 6 C.L.J. 621
9(1899) 10 Mad. L.J. 114
10(1885) I.L.R. 9 Bom. 198