Privy Council Appeal No. 86 *of* 1917.
Bengal Appeal No. 23 *of* 1915.

Srimati Rani Kuar Mani Singh Mandhata - - - - *Appellant*

v.

H.H. the Hon. Nawab Bahadur of Murshidabad - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE COUNCIL, DELIVERED THE 3RD DECEMBER, 1918.

Present at the Hearing:

LORD PHILLIMORE.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

Raja Prithwi Nath Singh Mandhata died on the 4th October, 1882, without male issue and was succeeded by his two widows. At his death he was heavily indebted, and on the 1st March, 1886, the widows presented a petition to the Commissioner of their division praying that he would recommend the Court of Wards to take charge of the estate. On the 30th July, 1886, the Court of Wards under section 27 of the Court of Wards Act, 1879, declared the widows to be disqualified proprietors under section 6 (a) of the Act, and by the same order declared under section 35 that it had determined to take under its charge the property of the widows and directed that possession be taken of the property on behalf of the Court.

On the 7th of June, 1890, a part of the property called Killa Nazagram was sold to the defendant's father and predecessor in title, and the transfer was executed by the Collector. The

purchaser obtained possession admittedly not later than the 30th April, 1891. The defendant's father subsequently obtained a transfer of two villages called Pirote and Sukdubi, and this was executed by the Collector on the 11th of February, 1901.

On the 1st of August, 1911, the Court of Wards withdrew from the charge of the property. On the 31st May, 1912, the surviving widow instituted this suit impugning the two sales and transfers and praying that she might be restored to possession. At the first hearing 16 issues were framed.

The fight was whether the suit was barred by limitation. On the defendant's application under O. XIV. v. 2 of the Civil Procedure Code the Court tried this and two other issues first, and disposed of the suit as barred by limitation. On appeal the High Court set aside the decree of the first Court in so far as it related to the two villages Sukdubi and Pirote comprised in the Kabula of the 11th February, 1901, and ordered that the case be remanded to that Court to be dealt with according to the directions contained in the High Court's judgment, but in other respects affirmed the decree then under appeal.

From the High Court's decree the present appeal has been preferred. Though the grounds of appeal attack the procedure adopted at the trial the argument before this Board has been limited to the question whether the plaintiff's claim to the properties comprised in the transfer of the 7th June, 1890, is barred by limitation.

The purchaser's possession began not later than the 30th of April, 1891, so that at the date this suit was instituted the defendant and his father, from whom he derives his liability to be sued, had been in possession of the property on the strength of their title more than 21 years. It is, however, contended that time did not run against the plaintiff during the period that the Court of Wards was, as it has been termed, in possession, and to lend the greater force to this contention it is argued that a disqualified proprietor has no right to sue so long as the property remains in charge of the Court of Wards. This curtailment of the rights of a disqualified proprietor depends on the provisions contained in Part VII of the Court of Wards Act. To meet this objection the Subordinate Judge held that the plaintiff came within clause (e) of section 6 of the Act, and so was unaffected by the restrictive provisions of Part VII. But this view cannot be supported: clause (e) had not been enacted when the widows were declared disqualified to manage their own property, and this declaration was expressly based on clause (a) of the section. But while this ground of decision is misconceived, the plea of limitation has been rightly held a bar to the suit so far as it relates to the property comprised in the transfer of 7th June, 1890.

Before that transfer and until the purchaser acquired possession under it the plaintiff and her co-widow were in possession of the property, and none the less because it was in the charge of the Court of Wards. This possession was discontinued, and the possession of the defendant's father began as a result of that

transfer, and was continued without interruption for a period far in excess of the statutory limit of 12 years, first by the father and then by the defendant, his son, each claiming as of right and on his own behalf adversely to the plaintiff. These facts, standing alone, present a complete bar to the suit so far as it seeks the restoration of this part of the suit property; nor is the position altered because the plaintiff was a disqualified proprietor until the first August, 1911. The Limitation Act, it is true, recognizes and enumerates certain conditions as legal disabilities entitling the persons affected by them to an extended period of limitation. But the plaintiff's disqualification under section 6 (a) of the Court of Wards Act is not one of them, nor has any case been made which could suspend or modify the ordinary law of limitation as applicable to this case. The objection taken in argument has been directed not to that part of the High Court decree which ordered a remand, but to so much of it as affirmed the decree of the Subordinate Judge, and the discussion at the Bar has been confined to the plea of limitation. Their Lordships, therefore, are not called on to consider any other question which may affect this litigation, and they wish to guard themselves against being supposed to have decided either directly or inferentially anything beyond that particular plea.

From the view they take of this plea it necessarily follows that this appeal fails, and they will therefore humbly advise His Majesty that it should be dismissed, and the appellant must pay the cost of this appeal.

In the Privy Council.

SRIMATI RANI KUAR MANI SINGH MANDHATA

v.

H.H. THE HON. NAWAB BAHADUR OF MURSHIDABAD.

DELIVERED BY SIR LAWRENCE JENKINS.

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