

Privy Council Appeal No. 32 of 1927.

Rikhi Ram and another - - - - - *Appellants*

v.

Dhanpat Rai and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 8TH MAY, 1928.

Present at the Hearing :

VISCOUNT SUMNER.
LORD SHAW.
LORD CARSON.
LORD BLANESBURGH.
LORD ATKIN.

[*Delivered by LORD SHAW.*]

This is an appeal from the decree of the High Court of Judicature at Lahore, dated the 7th March, 1924, which reverses a decree of the Senior Subordinate Judge at Karnal dated the 30th June, 1920.

The plaintiffs-respondents claim to pre-empt the sale of occupancy rights in certain lands in Kaithal Mundi, and the suit was accordingly brought by them against the defendants-appellants and others, who are vendees. There is no question of proprietary rights in the case. Defendants 6 to 10, being five occupancy tenants, sold their occupancy rights to the appellant Rikhi Ram for Rs. 3,650. The sale challenged was by deed dated the 25th August, 1917, and the conveyance was registered on the 27th August. Shortly after the purchase he sold one-half, as after mentioned, to defendants Bhiku Mal, Partapa Mal and Miri Mal. The suit was brought on the 7th October, 1919.

Judged accordingly by the dates alone, this suit for pre-emption, brought more than two years after the sale, would be excluded by the Limitation Act, namely, Act 9 of 1908, Schedule I, Article 10.

It being admitted that at, or immediately after, the date of the sale, Rikhi Ram the purchaser entered into possession, and began building operations, the same result would follow under Section 30, being the Limitation Section of Act I of the Punjab Statutes, 1913.

The subject of the sale was certain land, which was in the nature of waste land, suitable for building, and in or in the immediate neighbourhood of Kaithal Mundi. The point, as to whether it is within or outside of the Mundi was the subject of the first issue framed by the Court, and on it differing decisions were given in the Courts below. The point, however, is of no real importance to the decision now given on the grounds about to be stated.

Notwithstanding the dates, the interval between which would signify that limitation applied, the issue in the action on limitation is founded upon Section 18 of the Limitation Act, the section which provides that where the applicant has been kept from the knowledge of his right by means of fraud, or where any document necessary to establish his right has been fraudulently concealed, then the time for instituting a suit is to be reckoned "from the time when the fraud first became known to the person injuriously affected." The Senior Subordinate Judge on this issue held that there was no fraud in the case, nor was there any fraudulent concealment. The judgment on this point was reversed by the High Court; while, on the question of the time when the alleged fraud came to the knowledge of the plaintiffs, although the plaintiffs themselves did not appear as witnesses, the High Court also reversed the judgment of the Senior Subordinate Judge.

It might be necessary to scrutinise in careful detail the reasoning and conclusions of the High Court judgment on these topics; but in their Lordships' opinion the case can be quite well disposed of, apart from limitation, and on another ground which to their Lordships seems to be fundamental to the whole position and fatal to the rights of the respondents.

This ground will appear from a brief statement of the events which occurred between the date of the purchase of the occupancy rights by Rikhi Ram in August, 1917, and the institution of the suit in October, 1919. It is now admitted that Rikhi Ram's purchase was for himself and others. Rikhi Ram explains that he wanted to add the names of the others in the sale deed, but they wanted separate documents from him. These documents they obtained; he sold a one-half share of his occupancy rights in the lands to the defendants Bhiku Mal, Partapa Mal and Miri Mal, and they began to build shops. This was itself a public fact. It was followed, however, by an objection by the landlords of the village (the land being communal land), who prayed for cancellation by reason of disconformity to the requirements of Section 53 of the Punjab Tenancy Act. This application was made on the 25th March, 1918. The applicants expressly took the point that "there are other vendees (than Rikhi Ram) who were non-agriculturists" and had no right in the Shamilat, and that, therefore, the sale of occupancy rights should be cancelled.

Then on the 9th September, 1918, a suit was filed on behalf of all the landlords of the village in the Court of the Assistant Collector of Karnal against the appellant Rikhi Ram and his co-sharers. The importance of that suit is that all the 216 landlords of the village, including the present plaintiffs-respondents, were parties to it. One of the statements was that the defendants other than Rikhi Ram were "in fact co-sharers with him," and it was claimed that the sale was accordingly null and void. That suit was decreed by the Assistant Collector in January, 1919. On appeal to the Collector, however, he found as follows: "Accordingly I accept the appeal and find that the sale of occupancy rights is valid." This happened upon the 10th March, 1919.

A further appeal was then made to the Commissioner of the Ambala Division, and then a compromise among all the parties was effected. The deed of compromise is dated the 31st May, 1919 :—

"We, the Biswedars of Patti Gadar, Kaithal, withdraw our claim, and give up conducting this appeal.' This case was brought on the strength of proprietary rights in respect of the land in dispute. The Collector, District Karnal, granted permission to sell these proprietary rights on an application filed by a large number of persons of Patti Gadar, Kaithal. Now we, the proprietors of the Patti, of our own accord, in consideration of the said permission to alienate the proprietary rights, having compromised with the defendants-vendees, respondents, have received Rs. 1,300 in cash of the Government coin."

This deed further narrates that :—

"The defendants vendees-respondents have contributed as under :—

"Rikhi Ram, son of Jai Ram Das, to the extent of half-share, Rs. 650.

"Bhiku Mal and Partapa Mal, sons of Anant Ram, to the extent of one-fourth share, Rs. 325.

"Miri Mal, son of Piare Lal, to the extent of one-fourth share, Rs. 325."

And concludes with an agreement containing *inter alia* the provision :—

"Now we (the proprietors of the Patti) have no concern with the previous proprietary rights in respect of the land in dispute. We, the proprietors, whose signatures and thumb-marks are borne on the deed of compromise, make ourselves responsible for payment of damages and costs to the above-named persons, in case if any one brings any sort of suit in respect of the said land."

* * * * *

"We, the proprietors of the Patti, also pray that mutation entry in respect of the proprietary rights may be made in favour of the respondents-vendees in the revenue papers according to this compromise."

The Revenue Officer sanctioned the sale in favour of the appellants. The Commissioner passed a decree in terms of the compromise on the 2nd June, 1919. The consideration was a sum of Rs. 1,300. That consideration was paid, and has been devoted to public and communal purposes for the benefit of the Mundi as a whole.

Further, it was part of the compromise that mutation should take place, and this was duly effected. Extracts from the mutation register are produced, and the reports of the Patwari dated the 11th, and that of the Tahsildar of the 24th September, 1919, are contained in the final column of the register which identifies the property and enumerates the owners, recording the fact that Rikhi Ram was owner of one-half, Miri Mal owner of one-fourth, and Bhiku Mal and Partapa Mal owners of the remaining fourth between them. That final column is as follows :—

“ According to mutation No. 357, Rikhi Ram, occupancy tenant, has been shown as malik kabza. Therefore, the name of the said occupancy tenant may be removed. The entry is made in the mutation register, and the papers are submitted for necessary orders. The report is entered in the village Roznamcha at No. 19, dated the 11th September, 1919.

“ Signature of
 “ MUNI LAL,
 “ Patwari deh.

“ Rikhi Ram was the occupancy tenant of Nos. 1127/1, 1127/2 and 1127/3. Rikhi Ram, etc., have purchased the proprietary rights in respect of the said numbers *vide* mutation No. 357.

“ Now Rikhi Ram has become the owner of $\frac{1}{2}$ -share. He cannot now be shown as occupancy tenant. Therefore his name as occupancy tenant may be removed.

“ Dated the 24th September, 1919.

“ Signature of :—
 “ SHEIKH AZIZ-UL-RAHMAN,
 “ Tahsildar.”

It will thus be seen that the occupancy rights have been consolidated, or rather, merged in the ownership rights ; that these belong to the appellants, and that the respondents were themselves parties to the suit in the course of which this compromise arrangement was come to followed by the decree and mutation proceedings above cited.

The only argument that appears possible in these circumstances is that the respondents personally did not sign the compromise, they being two out of 276 landlords and parties to the suit. On the other hand, a number of apparently representative landlords did sign. It is to be observed, however, that no such plea is made. If it had been, it would have been sufficiently answered by the authorities such as *Idris and others v. Skinner* (54 Punjab Record in the judgment of Lord Buckmaster, page 217),—a strong case, some of the villagers having been minors and their representatives claiming that they were not bound by a transaction carried through in the communal interest with the approval of the Court by two of the villagers. In the present case, however, the compromise is not challenged ; it has neither been disclaimed nor impeached : it stands. Nor is any challenge made of the judgment which followed it ; that also stands. This being so, it appears to their Lordships to be beyond argument that the

respondents can in this suit have no right or title to prefer a claim for pre-emption to the lands upon which the buildings were erected, a claim which, if sustained, might destroy the entire value and validity of the settlement and decree. Whether the case be viewed under the heading of *res judicata* or of estoppel, or of no title and interest to sue, the result would be the same ; the respondents' claim in this litigation is excluded. Valuable consideration has been paid for the transaction under which the respondents' rights, including, of course, any claim of pre-emption, have disappeared. On this ground the judgment of the High Court must be reversed.

It thus becomes unnecessary to deal with the points arising under the Limitation Act. But their Lordships desire it to be fully understood that the Board is in no way committed, either to the opinions expressed by the High Court that there was in this case any fraud either practised or concealed, or to the views expressed by the High Court on the questions of limitation and the points as to onus treated by the learned Judges.

In the course of the discussion it was stated that the respondents had seized and were in occupation of the lands and buildings thereon. It may well be that in respect thereof a claim to mesne profits has emerged to the appellants. But their Lordships are not on this appeal in a position to deal with this matter and they must leave the appellants to make in India such claim with respect thereto as they may be advised.

Their Lordships will humbly advise His Majesty that the decree appealed from be reversed, that the decree of the Senior Subordinate Judge at Karnal dated the 30th June, 1920, be restored, and that the appellants be found entitled to costs.

In the Privy Council.

RIKHI RAM AND ANOTHER

vs.

DHANPAT RAI AND OTHERS.

DELIVERED BY LORD SHAW.

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