

Privy Council Appeal No. 65 of 1935

Patna Appeal No. 21 of 1933

Karunakar Tikait Samanta and others - - - *Appellants*

v.

Purna Chandra Bidyadhar Mahapatra and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 17TH FEBRUARY, 1938

Present at the Hearing :

LORD ROMER.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

The dispute in this appeal relates to an estate called Killah Kalkala, which is situated in the Cuttack district of the Province of Orissa. The estate was not originally recognised as a separate revenue-paying unit, but was included for the purpose of the payment of land revenue in a larger estate called Killah Durpam. It was in 1805 that one Ram Chandra, who was the owner of Killah Kalkala at that time, was authorised to pay the revenue assessed on it direct to the collectorate.

Ram Chandra died in 1844, and the present claimants of the estate are the descendants of his grandson Pitamber on the one side, who are in possession of the estate, and the descendants of Pitamber's younger brother Niladri on the other side. The latter lay claim to a moiety of the estate. The Trial Judge allowed their claim, but his judgment has been reversed by the High Court of Judicature at Patna.

It appears that Pitamber, after the death of his father Sripati, applied to the Collector in 1879 for the registration of his name as the sole proprietor of Killah Kalkala on the ground that the succession to the estate was governed by the rule of primogeniture, and that he, being the elder son of Sripati, was entitled to succeed to it to the exclusion of his younger brother Niladri. Niladri was a minor at that time, and his mother, acting as his guardian, challenged Pitamber's right to inherit the whole of the estate and urged that her son was entitled to a moiety of it. The dispute between the brothers was ultimately settled by the intervention of certain persons who acted either as arbitrators

or mediators. The result, however, was that Niladri got only a small portion of the whole estate, namely, a village called Baunsmuli, a house and certain other lands; while the elder brother, Pitamber, was recognised to be the owner of the remaining estate which was, at that time, in his possession. The terms of the settlement were set out in a petition submitted by the elder brother on the 22nd September, 1879, to the Collector of the district, in which he stated that he had given to his younger brother the village Baunsmuli and certain other properties by way of maintenance, and that the latter's mother and guardian had given her consent to the applicant's name being entered in the revenue register as the sole owner of the rest of the estate.

This settlement of the dispute remained in force for nearly 50 years without any demur by the younger brother; and it was not until January, 1928, that Niladri's descendants, who are the appellants before their Lordships, commenced the present action to recover one moiety of the whole estate on the allegation that the estate being partible in title belonged to the two brothers Pitamber and Niladri in equal shares, and that the plaintiffs were entitled to one-half of the estate.

Their claim was resisted by Pitamber's descendants on various grounds including the plea of limitation. On issue No. 5, which was founded on this plea, the High Court gave their judgment against the plaintiffs, holding that the defendants had been in adverse possession of the estate since 1879, and that the plaintiffs' title, if any, to the property claimed by them had been extinguished by lapse of time. Their Lordships after examining the arguments advanced on behalf of the parties have no hesitation in concurring in the conclusion reached by the High Court. It is clear that Niladri obtained possession of only those properties which were allotted to him in 1879, and that neither he nor any of his descendants was ever in possession of the rest of the estate. There can be no doubt that Pitamber and his descendants have been in exclusive possession of the remaining estate for nearly 50 years, and that they never recognised the right of the plaintiffs to any share in that estate. The defendants' possession has been adverse to the plaintiffs for more than the period of 12 years prescribed by the law of limitation, and has ripened into ownership.

Their Lordships cannot accede to the suggestion that the separate possession of the properties allotted to each brother in 1879 was merely an arrangement for the mode of enjoyment of the profits of the estate without affecting their title to it. This contention runs counter to all the known circumstances of the case. That the allotment of the properties made in 1879 was intended to be a final and permanent settlement of the dispute between the brothers is clear from the petition of the 22nd September, 1879, in which Pitamber declared in unequivocal language that he had given the property specified therein for the maintenance of his brother who will "enjoy and hold the said mauza (namely, Baunsmuli) and lands from generation to

generation." This was, as stated above, done with the consent of Niladri's mother who agreed on his behalf that the rest of the estate should be recorded as the property of the elder brother. The fact that each brother regarded himself as the exclusive owner of the property allotted to him was emphasised in an award made by the arbitrators in December, 1899, when there was a dispute between Niladri, who was in possession of the village Baunsmuli, and Pitamber's son Raghunath, who had inherited the estate from his father, as to whether certain lands were included in Baunsmuli or not. It is to be observed that the award describes Raghunath as the Raja in possession of the estate, and Niladri as holding the village in question in lieu of maintenance. This description was in accordance with the rights conferred upon them by the settlement of 1879, and it is clear that it does not lend any support to the argument that the settlement was merely a temporary arrangement which was to hold good until there was a partition of the whole estate.

It is significant that not only Niladri, after attaining majority, accepted the settlement and acted upon it, but also his son Karunakar recognised Pitamber's right to succeed to the estate. In 1922, Karunakar stated as a witness in another case, that "in Killah Kalkala if the Raja dies, his eldest son gets the estate and the younger son gets maintenance allowance. My father as the younger brother got maintenance."

The evidence adduced by the parties, documentary as well as oral, leaves no doubt that the settlement of 1879 was intended to be a permanent division of the estate, and that each party has been in exclusive possession of the properties assigned to him at that time. The claim now made by the plaintiffs must fail on the preliminary ground that it is barred by the law of limitation.

The appeal, therefore, fails, and must be dismissed with costs to the first respondent, who alone has appeared. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

KARUNAKAR TIKAIT SAMANTA
AND OTHERS

v.

PURNA CHANDRA BIDYADHAR
MAHAPATRA AND OTHERS

DELIVERED BY SIR SHADI LAL

Printed by His Majesty's Stationery Office Press,
POCOCK STREET, S. E. 1.

1938