

**Haripada Haldar and ors. Vs. Baradaprosad Roy Chowdhury and ors.**

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**Court :** Kolkata

**Decided On :** May-08-1924

**Reported in :** 82Ind.Cas.322

**Judge :** Pearson and ;Graham, JJ.

**Appellant :** Haripada Haldar and ors.

**Respondent :** Baradaprosad Roy Chowdhury and ors.

**Judgement :**

1. This appeal is directed against an order of the Second Additional District Judge of the 24 Parganas confirming the order of the Munsif, Fourth Court, Diamond Harbour, dismissing an application for setting aside a sale in execution of a rent decree. The judgment-debtor applicants, now appellants, with a large number of co-sharers held under the decree-holder Barada Prosad Roy Chowdhury a chak comprising an area of 147 bighas bearing a yearly rental of Rs. 183-12. The said Barada Prosad sued the tenants, the applicants and their co-sharers for arrears of rent and obtained a decree on the 28th August 1917. The decree was in due course put into execution on the 18th January, 1918, and the chak in default being put up to sale was purchased by one Jadu Nath Sarma on the 2nd July 1918. The judgment-debtor Haripada and others then applied to have the sale set aside and assailed both the decree and the sale on various grounds. One of the points for determination was whether the application was barred by limitation, and the finding of the Munsif was that the case was governed by Article 166 of the Limitation Act, and that the application was time-barred, and he accordingly dismissed it with costs. On appeal the learned Additional District Judge confirmed the decision of the Munsif holding that Article 166 and not Article 181 was applicable to the case, and dismissed the appeal with costs. The judgment-debtors Hari Pada Haldar and others then filed the second appeal.

2. A preliminary objection has been taken on behalf of the respondents to the hearing of the appeal, firstly on the ground that in so far as the application was one under Section 173 of the Bengal Tenancy Act, no appeal lies either in this Court or in the Court of first appeal; and secondly that the appeal is not competent by reason of non-joinder of parties, the heirs and legal representatives of one of the respondents No. 10 Annoda Charan Haldar not having been brought on to the record. We do not think it is necessary to go into these matters because we are satisfied that the appeal fails upon the merits. On the merits the sole point for determination is whether the Courts below have rightly held that the application was barred by limitation. The execution sale took place on the 2nd July 1918, and the application for setting aside the sale was made in August 1920 i.e., some two years later. Under Article 166 the period of limitation is 30 days, whereas under Article 181 it is three years. If the former is applicable the application was clearly time-barred, while if Article 181 applies it was

within time. In our judgment the Courts below have rightly held that the case is governed by Article 166. The rulings which have been referred to in support of the contrary view; Chand Monee Dasya v. Santo Monee Dasya 1 C.W.N. 534 : 24 C. 707 : 12 Ind. Dec. (N.S.) 1140 and Chandrama Rai v. Maharaja of Dumraon 38 Ind. Cas. 209 were decided under the Act as it formerly stood before the passing of the present Limitation Act when Article 166 was restricted to a particular class of applications. That article as now worded is very much wider and is quite general in its terms governing all applications to have an execution sale set aside. Indeed it is arguable having regard to the extremely wide wording of the article that it covers the case of applications made under Section 173 of the Bengal Tenancy Act. But, be that as it may, it is clear that an application under Section 173, Bengal Tenancy Act, is cognisable under Section 47, Code of Civil Procedure [see Chand Monee Dasya v. Santo Monee Dasya 1 C.W.N. 534 : 24 C. 707 : 12 Ind. Dec. (N.S.) 1140 relating to Section 244 of the Old Civil Procedure Code], and that being so the operation of Article 166 will be attracted. This view accords moreover with the fitness of things as it is manifestly anomalous that the period of limitation for setting aside a sale under the Bengal Tenancy Act should be so long as three years, whereas under the Code of Civil Procedure it should be only 30 days. As pointed out in Satish Chandra Kanungo v. Nishi Chandra Duttu 54 Ind. Cas. 431 : 46 C. 975 at p. 977 the policy of the Legislature appears to be that questions arising in execution should be brought before the Courts and decided with the least possible delay. In the present instance nearly two years elapsed before the application was made.

3. For the reasons stated the appeal in our judgment fails and must be dismissed with costs. Hearing-fee two gold mohurs.

4. An application is also made under Section 115, Civil Procedure Code, in the alternative. Inasmuch as we have disposed of the appeal on the merits it is not necessary to pass any order under Section 115, Civil Procedure Code.

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