

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Annada Pershad Panja and others v. Pra-
sannamoyi Dasi, from the High Court of
Judicature at Fort William in Bengal,
delivered the 15th May 1907.*

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

This is an appeal by the Defendants from a decision of the High Court of Bengal affirming the decision of the District Judge passed on remand, which had affirmed the decision of the Subordinate Judge. The Plaintiff's claim was to recover possession of certain land from the Defendants, together with mesne profits. The facts were complicated, and several difficult questions of fact and law arose for decision, but the only question raised before their Lordships on this Appeal is whether Article 95 of the Indian Limitation Act, 1877, is a bar to the Plaintiff's claim.

The land in question is known as Mehal Arjunbani and is a patni tenure which was once held by a lady named Damayanti Debi ; she died leaving six daughters, of whom five, acting as executors of their mother's will, of which they had obtained probate, granted a darpatni, or under-lease, to one Jogendra Nath Singh on 25th May 1885.

On the 8th February 1891 the five daughters (the sixth was then dead) sold their patni or

superior rights to Raghu Nath Panja, under whom the Defendants (the Appellants) claim.

Meanwhile, viz., on the 24th November 1886, the original Plaintiff, Dhan Krishna Mandal, had bought from Jogendra Nath Singh his darpatni right benami, that is to say, in the name of, his son-in-law, Sarat Chandra Mandal, whose name accordingly was entered in the collector's book as the darpatni holder. Though much contested at the trial, it is now formally admitted that in this transaction Sarat Chandra Mandal was merely a *prête-nom* for the Plaintiff, Dhan Krishna Mandal, who was the real purchaser and beneficial owner of the interest purchased.

In these circumstances, in 1889 Raghu Nath Panja, being the owner of the patni or superior rights, entered into a fraudulent arrangement with Sarat Chandra Mandal, the nominal holder of the darpatni or sub-lessee rights, whereby a collusive judgment was obtained as for rent in arrear, and a sale of the darpatni interest of which Sarat Chandra Mandal was the nominal holder was ordered, and Raghu Nath Panja allowed to become the purchaser.

This sale took place on 20th June 1891. Dhan Krishna Mandal commenced this suit on the 25th October 1895. It is admitted that he had become aware of the fraud which had been practised upon him on or before the 29th July 1892, and, therefore, more than three years had elapsed between his discovery of the fraud and the commencement of the suit.

By Article 95 of the Indian Limitation Act, 1877, the period of limitation for a suit to set aside a Decree obtained by fraud, or for other relief on the ground of fraud, is three years from the time when the fraud became known to the party wronged. The Courts below have held that the Article is not a bar to the action, and the only

question on this Appeal is whether they are right.

Their Lordships concur in the result arrived at by the Court below. On the facts, as now admitted, Dhan Krishna Mandal was the true owner of the interest in the land which was sold by Jogendra Nath Singh, and nothing that happened between Sarat Chandra Mandal and Raghu Nath Panja could affect his title unless he was estopped from denying the authority of his benamidar to deal with it. On the facts of the case no such estoppel could exist, and, therefore, Raghu Nath Panja could not acquire from Sarat Chandra Mandal more than the latter had to give. Nor has it been proved before their Lordships, any more than it was proved to the satisfaction of the Court below, that the Court purported to direct a sale of anything more than such interest as Sarat Chandra Mandal had in the premises. The onus on this point was on the Defendants, who to make good their defence on the statute must show that the Plaintiff cannot succeed without setting aside the decree. As pointed out by the Officiating District Judge, the sale certificate was in the hands of the Defendants, and was not produced. The Plaintiff's title, therefore, for anything that appears to the contrary, was in no way affected by the sale under order of the Court, and it is not necessary for him to have the sale set aside. He is entitled to possession of the land from which the Defendants have ousted him, but to which they can show no title, together with mesne profits, from the date of his dispossession, which is all that this suit was brought to procure. Their Lordships will, therefore, humbly advise His Majesty that this Appeal be dismissed. The Respondent not having appeared, there will be no order as to costs.
