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BEAUMONT C. J. AND N. J. WADIA J.

Narbheramji Gyaniramji Ramsnehi — *Defendant* — Appellant.

v.

Vivekramji Bhagatramji Ramsnehi — *Plaintiff* — Respondent.

First Appeal No. 208 of 1937, Decided on 8th March 1939, from decision of Assistant Judge, Ahmedabad, in C. S. No. 32 of 1937.

(a) Limitation — Limitation can be pleaded even in appeal.

A question of limitation can be raised in appeal even if it has not been raised in the Court below. [P 425 C 2]

(b) Bombay Land Revenue Code (5 of 1879), S. 133 — Sanad granted under S. 133 is not document of title—Person suing for possession need not set aside sanad before obtaining possession — Art. 14, Limitation Act, is not bar to such suit.

A sanad granted under Sec. 133 is not strictly speaking in the nature of document of title between litigating parties. It is a document affecting rights only between the Crown and the person to whom it is granted. The object of an inquiry under the Land Revenue Code is to determine the right of Government to revenue, and for that purpose to survey the land and to determine who is the holder and therefore liable to assessment. But an order made under the Land Revenue Code is not intended to operate, and does not operate, finally as a determination of title between subjects of Government. It is not essential for a person claiming possession against the person, who has been granted a sanad under S. 133, to obtain an order setting aside that sanad before he can obtain an order for recovery of possession from a Civil Court and Art. 14, Limitation Act, would not be any bar to the suit : *A I R 1925 Bom 477, Expl.* [P 426 C 1, 2; P 427 C 1]

H. C. Coyajee, M. R. Vidyarthi, R. A. Desai, B. Moropanth and R. P. Cholia — *for Appellant.*

B. R. Ambedkar, M. H. Vakeel and P. N. Shende — *for Respondent.*

Beaumont C. J. — This is an appeal from an order of the Assistant Judge of Ahmedabad. The only point argued on the appeal is one of limitation, and it arises in this way. The plaintiff is suing to recover the Ramsnehi Sampradaya temple at Ahmedabad, which is in the possession of the defendant. The plaintiff claims as the successor of Snehiramji, who founded the religious institution to which this temple belongs. There are three Ramdwars belonging to the institution—one at Surat, one at Baroda and one at Ahmedabad. The Ramdwar at Surat is the headquarters, where the plaintiff resides, and, according to the plaintiff's case, the Ramdwar at Ahmedabad is managed by the defendant as his agent. On the other hand, the defendant contends that he is the mahant of the Ahmedabad Ramdwar in his own right, and the plaintiff has no interest therein. The learned Judge framed issues dealing with the title to the Ahmedabad Ramdwar, and held that the plaintiff had established his title as the owner of the property as mahant, and that the defendant was only his manager, and accordingly he ordered the defendant to hand over the possession of the suit property to the plaintiff. On this appeal the point is taken that the plaintiff's suit must fail under Art. 14, Limitation Act. That point was not raised in the Court below, and is therefore not discussed by the learned Judge. But it can undoubtedly be raised in appeal, and indeed any question of limitation must be taken by the Court. The point arises in this way.

In the year 1922, there was an inquiry, under the Bombay Land Revenue Code, to determine who was entitled to the possession of the temple in suit, and on 2nd February 1922, a finding was recorded by the inquiry officer, and is entered in the register of the city survey for the city of Ahmedabad in these terms: "Sanad not produced. Holder Ramdwara Mandir, Manager Nurbheramji Guru Gyaniramji by inheritance." That is to say, the holder is the Ramdwar Mandir, the manager is the defendant, and the guru is Gyaniramji, through whom both the plaintiff and the defendant claim. So that that entry seems to me indecisive on the dispute between the plaintiff and the defendant. But following upon that a sanad was issued, under S. 133, Bombay Land Revenue Code, on 18th April 1922. That document is addressed to the defendant, manager of the Ramdwar temple, and it recites that the Governor-in-Council, with a view to the settlement of the land revenue and the record and preservation of proprietary and other rights connected with the soil, has, under the provisions of the Bombay Land Revenue Code, directed the survey of the city site within the limits of Ahmedabad city, and ordered the necessary inquiries connected therewith to be made. Then the sanad describes the suit property and provides as follows:

> The said khata is confirmed to you as religious and exempt from all land revenue by this sanad. The terms of your tenure are such that your khata is transferable and heritable and will be continued by the British Government, without raising any objection or question as to right (hak), to whosoever shall from time to time be the lawful holder of that khata (occupancy).

Subsequently, the plaintiff applied to the revenue authorities and an appeal was lodged against the order of the inquiry officer, and that appeal was dismissed on 28th June 1923, by the District Deputy Collector, whose order is Ex. 96. Art. 14, Limitation Act, provides that an application to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for, shall be brought within one year from the date of the act or order. It is contended that the decision of the inquiry officer is an order of a Government officer, and the sanad is an act of such officer in his official capacity, and I think those two points may be conceded. But the question is whether this is a suit to set aside an act or an order of a Government officer within Art. 14. Certainly the plaint does not ask in terms that the order or sanad be set aside. It does ask for possession, and the contention put forward by the appellant is that the Court could not make an order for possession in face of this sanad, but must set aside the sanad first, and that any order for possession as against the appellant involves setting aside the sanad on which he relies. That argument, I think, might prevail, if the sanad were an ordinary document of title. If a plaintiff is suing for possession, and the defendant relies on a conveyance from the plaintiff or his predecessor, it may be necessary to set that conveyance aside before the plaintiff can get an order for possession, and in these circumstances the suit for possession would be in substance a suit to set aside a document within the Limitation Act, though that relief be not expressly asked for. To my mind the real question on this appeal is, whether the sanad, which is much more precise than the order of the inquiry officer, amounts to something in the nature of a document of title, which must be set aside before the plaintiff can get an order for possession.

Mr. Coyajee for the appellant relies on a dictum of Sir Norman Macleod in 27 Bom L R 948[1] in which he refers to a sanad granted under S. 133, Bombay Land Revenue Code, as in the nature of a document of title, but in that case the learned Chief Justice was not considering the question which we have to deal with. To my mind, a sanad granted under S. 133 is not strictly speaking in the nature of a document of title between litigating parties. It is a document affecting rights only between the Crown and the person to whom it is granted. The object of an inquiry under the Land Revenue Code is to determine the right of Government to revenue, and for that purpose to survey the land and to determine who is the holder and therefore liable to assessment. But an order made under the Land Revenue Code is not, in my opinion, intended to operate, and does not operate, finally as a determination of title between subjects of Government. No doubt an order made under the Land Revenue Code is prima facie evidence of title, but it is not conclusive and may be over-ridden as other evidence may be over-ridden. It is not, in my opinion, essential for a person in the position of the plaintiff in this case claiming possession against the defendant, who has been granted a sanad under S. 133, to obtain an order setting aside that sanad before he can obtain an order for recovery of possession from a Civil Court. It is always open to the revenue authorities to correct their record, and if the plaintiff, having obtained an order for possession or an order declaring his title from a competent Civil Court, goes to the revenue authorities, I have no doubt that the necessary corrections will be made in the revenue records. But the revenue records, in my opinion, are not conclusive in favour of the defendant as against the plaintiff, and it is not therefore essential that the Court should make an order setting aside the sanad before granting an order for possession to the plaintiff. The appeal therefore fails and must be dismissed with costs.

N. J. Wadia J.—I agree. The only question before us is whether the order of the revenue authorities granting the defendant a sanad in respect of the suit property was an order within the meaning of Art. 14, Limitation Act, which the plaintiff would have to set aside before he could succeed in his suit for possession of the property. The sanad was granted under S. 133 of the Bombay Land Revenue Code. The inquiry, which was made under the provisions of S. 131 of that Code, was an inquiry of the kind provided by S. 95, that is a survey with a view to the settlement of the land revenue and to the record and preservation of rights connected therewith. Such an inquiry is not intended, and could not from its very nature have been intended, to settle disputes between private persons with regard to titles to property. All that the

1. Ulawappa v. Gadigewa, (1925) 12 A I R Bom 477=89 I C 894=27 Bom L R 948.

inquiry officer would be concerned with would be the fact of actual possession. If, at the time of the city survey inquiry with regard to the suit property in 1922, the plaintiff had contended that, although the defendant happened to be in possession, the real title to the property lay in the plaintiff, it would have been beyond the powers of the inquiry officer to go into the question and to decide in whom the real title lay. Still less would it have been in his power to deprive the defendant of the possession which he actually had, even though that possession might be found to be illegal. All that he would be concerned with would be to ascertain who was actually in possession.

If therefore the question of the plaintiff's title could not have been gone into by the inquiry officer and decided, it is not possible to hold that any decision with regard to actual possession, which might be given by the inquiry officer, could deprive the plaintiff of his right to get the question of title decided by a Civil Court. The inquiry, which is held under S. 131 of the Bombay Land Revenue Code for the purposes of the city survey settlement, is similar in its nature to the inquiry which is held under S. 95 of the Bombay Land Revenue Code with regard to agricultural lands, and is merely concerned with settling who is actually in possession and liable to pay the assessment. The decision in such an inquiry would undoubtedly be a piece of evidence in favour of the person whose name is entered and to whom the sanad is given as a result of the decision, but, it could not be considered as deciding the rights to title between the holder for the time being and others who may or may not have been represented in the inquiry and whose title to the property could not have been gone into by the inquiry officer. It would not be necessary for the plaintiff to get the order of the inquiry officer, or the sanad, which was granted as the result of that order, set aside before he could sue for possession, and Art. 14, Limitation Act, would not be any bar to the suit. I agree therefore that the appeal should be dismissed with costs.

D.S./R.K. *Appeal dismissed.*

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LOKUR J.

Amateppa Danappa Koppal — Defendant 3 — Appellant.

v.

Sanganbasappa Bhojappa Gavadar, Plaintiff, and others, Defendants — Respondents.

Second Appeal No. 224 of 1937, Decided on 9th March 1939, from decision of Dist. Judge, Bijapur, in Appeal No. 133 of 1935.

(a) Deed—Construction—Principle.

Stronger reasons are required to reach a conclusion which is at variance with the plain language of a solemnly executed document, especially when that conclusion is not suggested in the pleadings or depositions of the parties themselves. [P 430 C 1, 2]

(b) Limitation Act (1908), Art. 44—Art. 44 does not apply to transfer by de facto guardian of ward's property in his own capacity and as his own property — Sale deed executed by de-facto guardian and minor jointly held not executed as guardian.

Article 44 applies only to a transfer by a guardian, and not to a transfer by one who, though a de facto guardian, purports to transfer his ward's property in his own capacity and as his own property. [P 430 C 2]

A divided cousin of a minor who was his de facto guardian and manager of his property executed jointly with minor a sale deed in respect of the minor's property in which he had no interest. He and the minor treated the land as joint property and passed the sale deed each in his individual capacity:

Held that in these circumstances the cousin executed the sale deed in his personal capacity and not as the guardian of the minor. As he had no interest in the land and as the minor could not validly sell his interest in the land, the sale deed was ineffective: *20 Bom 286 and 11 W R 20, Ref.* [P 430 C 2]

(c) Deed—Construction—Principle.

In each case the language of the document and the circumstances in which it was executed must be considered: *20 Bom 286, Rel. on.* [P 429 C 1]

K. G. Datar — *for Appellant.*

S. B. Jathar and S. R. Joshi for S. M. Ankalikar — *for Respondents 1 and 4 (Defendants 1 and 4) respectively.*

Judgment.—The main facts of this case are not disputed in this Court. Defendant 1 is the divided cousin of defendant 2, and was his de facto guardian and the manager of his property ever since his mother deserted him in his infancy. Survey No. 127 of Nagral, measuring 25 acres and 12 gunthas, belonged to one Sankarappa and was inherited by his cousin Fakirappa, the father of defendant 2. Both the lower Courts have held that after Fakirappa's death defendant 2 became its sole owner, and that defendant 1 had no interest in it. That finding cannot be, and is not, chal-