

1883

THE MAHA-
BAJAH OF
BURDWAN
c.
KRISTO KA-
MINI DASL

The Court did not call on Mr. *Evans*, who appeared with Baboo *Troylokho Nath Mitter*, Baboo *Guru Das Banerjee*, and Baboo *Gogesh Chunder Dey* for the respondents.

The following was the opinion of the Full Bench :—

We are of opinion that in this case the notice was insufficient.

If there is a *cutcheri* upon the land of the defaulting *patnidar*, (by which expression we mean the land of the *taluk* in question), we think that the notice must be published at that *cutcheri*.

If there is no such *cutcheri*, the notice must be published at the principal town or village within the *taluk*.

We think also that the mere delivery of the notice to the *patnidar*, or one of his *amlas*, is not sufficient; but that it must be published in the manner required by the section. The necessity for accurately conforming to both provisions of the Regulation is laid down authoritatively by the Judicial Committee in the case of the *Maharajah of Burdwan v. Tara Soondery Debia* (1).

Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Mitter, Mr. Justice McDonell, Mr. Justice Prinsep, and Mr. Justice Tottenham.

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August 16.

SRINATH KUR AND OTHERS (PLAINTIFFS) v. PROSUNNO KUMAR GHOSE (DEFENDANT)*

Limitation Act (XV of 1877,) Sch. II, Art. 141—Act IX of 1871, Sch. II, Art. 140—Suit by Reversioner for possession.

Under Article 141 of Schedule II, Act XV of 1877, a reversioner who succeeds to immovable property has twelve years to bring his suit for possession from the time when his estate falls into possession.

THIS was a reference to a Full Bench by CUNNINGHAM and MACLEAN, JJ. The referring judgments were as follows :—

MACLEAN, J.—The plaintiffs are the grandsons (daughter's sons) of Radha Madhub Pal Chowdhry, by his daughter Shantomoni who died in 1284 (1877): the defendant is his grandson by his daughter Anundmoyi, who died in 1270 (1863). The property in

* Full Bench Reference No. 82 of 1882, against the decree of the Additional Subordinate Judge of Dacca, dated 26th November 1881, affirming the decree of the Second Munsiff of Munshigunj, dated 25th April 1881.

(1) L. R., 10 I. A., 19 : S. C., ante, p. 619.

suit is the residue of Radha Madhub's estate, exclusive of what has been alienated. Plaintiffs claim their share as having descended to them on their mother's death.

The defence is that by adverse possession of his father and himself since 1270 (1863) the defendant has acquired a good title.

The first Court decided that the plaintiff's mother alienated her share, and so effected a partition, and that therefore she did not hold any title after her sister's death. The Subordinate Judge did not agree with this part of the Munsiff's decision, but both Courts find as a fact that plaintiff's mother was out of possession from 1270 (1863); and applying the rule that adverse possession which would have extinguished her right also extinguished the reversioner's right, they have dismissed the plaintiffs' suit.

The question, therefore, is whether the rule which was laid down under Act XIV of 1859 is good law under the Limitation Acts of 1871 and 1877.

In *Saroda Soondury Dossee v. Doyamoyee Dossee* (1), the rule is re-affirmed in clear terms. That was a case governed by Act IX of 1871. I am not, however, prepared to adopt the qualification there put upon the words "entitled to possession." These words seem to me sufficiently clear, and I am not disposed to say that they only mean entitled to possession if the last female also was entitled to possession at the time of her death.

In *Pursut Koer v. Palut Roy* (2), the last female owner had been out of possession for 36 years before her death, and while it was held that the case (although time had run out under Act XIV of 1859) was really a case of improper alienation rather than of adverse possession, it was also decided that the suit was certainly not barred under Act XV of 1877, Art. 141, unless it had been barred under some former Act. In the case before us time had not run out under Act XIV of 1859; and as the Acts of 1871 and 1877 are identical in this respect, the only question was whether the suit has been brought within 12 years of Shantomoni's death. This is not disputed.

I have some doubts about the correctness of the decision in *Saroda Soondury Dossee v. Doyamoyee Dossee* (1). I was a party to the decision in *Pursut Koer v. Palut Roy* (2), and also to a recent

(1) I. L. R., 5 Calc., 938.

(2) I. L. R., 8 Calc., 443.

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decision, dated 14th March 1883, in appeal from Appellate Decree No. 1306 of 1881, in which, however, time had not run out against the late female owner.

In *Chunder Nath Das v. Asaram Das* (1), it was laid down that limitation ran under Art. 141 from the date of the plaintiffs' mother's death. This case is in support of the view I have taken. I think the question should be authoritatively settled by a Full Bench.

CUNNINGHAM, J.—The question raised in this appeal is whether under Art. 141 of the Limitation Act of 1877, the person entitled to the possession of property on the death of a Hindu or Mahomedan female can sue within 12 years of the death of the female, notwithstanding that the female's right of action was barred by 12 years' adverse possession.

As there appears to be some conflict of decision as to this point, and also as to whether time, which has begun to run against the female continues to run against the remainder man or whether a new period of limitation arises on the death of the female, I concur in referring both questions to the Full Bench.

Babu *Kalichurn Bannerjee*, for the appellants. In this case the widow's right is barred by 12 years adverse possession, so the question before the Court is whether the reversioner is also barred. Limitation runs not from the date of actual dispossession, but from the date when the estate falls into the reversioner's possession, *i.e.*, from the date of the death of the widow. *Chunder Nath Das v. Asaram Das* (1); see also *Pursut Koer v. Palut Roy* (2).

In an unreported case, Special Appeal 1306 of 1881, *Dwarkanath Gupta v. Komulmoney Dossee*, decided by Cunningham and Maclean, JJ., on the 14th March 1883, it was held that the meaning of Art. 141 is, that, although limitation has begun to run against a widow, yet a fresh period of limitation begins for the reversioner on her death. [GARTE, C.J.—The reversioner does not claim through the widow, but through the husband, so if limitation had run against the widow, he would not be bound by it.] As regards the case of *Nobin Chunder Chuckerbutty*

(1) 1 Shomb, 165.

(2) I. L. R., 8 Cal., 442.

v. *Guru Persad Doss* (1), it was decided on the Limitation Act of 1859, and it is very probable that the Legislature intentionally modified the effect of that case in passing the later Limitation Acts.

Baboo *Srinath Bannerjee* for the respondent, cited *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (1), and *Saroda Soondury Dossee v. Doyamoyee Dossee* (2).

The following opinions were delivered by the Full Bench :—

GARTE, C.J. (MITTEB, J., McDONNELL, J., and TOTTENHAM, J., concurring.)

We think that the rule which was laid down under the Limitation Act of 1859 is no longer the law under the Acts of 1871 and 1877.

A reversioner who succeeds to immovable property has now twelve years to bring his suit *from the time when his estate falls into possession*. (See Art. 141 of the Act of 1871, and Art. 140 of the Act of 1877). Under the Act of 1859 the language was very different. The suit under that Act must have been brought *within twelve years from the time when the cause of action arose*; and as it was considered by the Full Bench of this Court that the cause of action arose at the time when the owner of the inheritance was first dispossessed, they held that a twelve years dis-possession, which barred the owner of the inheritance for the time being, (although a female), barred also the reversioner. See *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (1).

The provision in the present Act, as well as that in the Act of 1871, as regards remaindermen and reversioners, assimilates the law in this country to the law of England. (See 3 and 4 Will. IV, Ch. 27, s. 4.) As the Subordinate Judge has decided in the plaintiffs' favor upon the merits, we think that they are entitled to a declaration of their rights, and to possession of the shares in question. They should also have their costs in all the Courts.

PRINSEP, J.—No doubt the terms of the Limitation Acts of 1871 and 1877 are materially altered in respect of the point now before us, from the Act of 1859, on which the judgment of the

(1) B. L. R., Sup. Vol., 1008 : S. C. & W. R., 505.

(2) I. L. R., 5 Cal., 938.

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1888: Full Bench in the case of *Nobin Chunder Chuckerbutty v. Guru Persad Doss* (1) proceeded; and although I do not wish to differ from the opinion of my learned colleagues, I have some hesitation in coming to the conclusion that the Legislature in 1871 deliberately altered the law thus laid down in 1868. I further observe that this point has never, that I can find, been before any Division Bench of the Court, except in the case of *Saroda Soondury Dossee v. Doyamoyee Dossee* (2), when the rule laid down in the Full Bench case above mentioned was followed.

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(1.) B. L. R. Sup. Vol., 1008 : S. C. 9 W. R., 506.

(2.) I. L. R., 5 Calc., 938.