

Before Mr. Justice Mitter and Mr. Justice Tottenham.

RAGHOO PANDEY AND ANOTHER (PLAINTIFFS) v. KASSY PAREY
AND OTHERS (DEFENDANTS.)*

1883
August 15.

*Limitation Act (XV of 1877). Art. 148—Right to officiate as priest,
Nature of Suit to establish.*

A right to officiate as priest at funeral ceremonies of Hindus is in the nature of immovable property, and a suit to establish such right therefore falls under Art. 148 and not under Art. 145 of the Limitation Act.

Baboo *Kashi Kant Sen* for the appellants.

Baboo *Kurona Sindhoo Mookerjee* for the respondents.

THE facts of this case sufficiently appear from the judgment of the Court (MITTER and TOTTENHAM, JJ.) which was delivered by

MITTER, J.—This is a suit for redemption of a certain share of *Brit Jugmanka*. It is a right to officiate as priest at funeral ceremonies of Hindus. The Munsiff awarded a decree in favor of the (plaintiffs) appellants. The lower Appellate Court has reversed that decree, holding that under Art. 145 of the present Limitation Act (No. XV of 1877), the claim is barred. It is of opinion that the right claimed is in the nature of movable property.

It is contended in appeal that the right claimed is in the nature of immovable property, and therefore the present suit falls under Art. 148, and not under 145.

There is no doubt that the right in question ranks amongst immovable property according to Hindu law. We need not here refer to the texts of the Hindu law bearing upon this question, as they are all collected in the two judgments of the Bombay High Court cited below, one of which was cited before us in the course of the argument, *Krishnabhat bin Husgange v. Kapabhat bin Mahulbhat* (1), and *Balvantrav v. Purshotram Sideshwar* (2).

In *Futtehsangji Jaswantsangji v. Desai Kallian Sangi*

* Appeal from Appellate Decree No. 1669 of 1882, against the decree of Baboo Dwarka Nanth Mitter, Extra Subordinate Judge of Gya, dated the 27th of June 1882, reversing the decree of Baboo Mohendro Lal Ghose, Second Munsiff of Gya, dated the 6th of February 1882.

(1) 6 Bom. H. C., A. C., 137.

(2) 9 Bom. H. C., 99.

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Hukoomut Raiji (1), the Judicial Committee of the Privy Council, after referring to the rule of construction adopted by the Bombay High Court in the two cases cited above, observe (p. 50): "To the application of this rule within proper limits, their Lordships see no objection. The question must, in every case, be whether the subject of the suit is in the nature of immovable property or of an interest in immovable property; and if its nature and quality can be only determined by Hindu law and usage, the Hindu law may properly be invoked for that purpose."

In this case "the nature and quality" of the property in suit can be only determined by Hindu law, because it is not recognized as property in any other system of law.

Adopting this principle of construction, therefore, we must come to the conclusion that the present suit falls under article 148 and not under 145.

We reverse the decision of the lower Appellate Court, and remand the case to that Court for the determination of the other question arising in it. Costs to abide the result.

Appeal allowed.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Macpherson.

1888
June 23.

HURRONATH CHOWDHRY (DEFENDANT) v. NISTARINI CHOWDRANI AND OTHERS (PLAINTIFFS).*

Appeal—Arbitration—Application to file award, Objections to—Civil Procedure Code (Act XIV of 1882), ss. 525, 520 and 521.

When an application is made to a Court to file an award under s. 525 of the Code of Civil Procedure, and an objection is made to the filing of it upon any of the grounds mentioned in s. 520 or 521, the proper course for the Court to pursue is to dismiss the application, and to leave the applicant to bring a regular suit to enforce the award in which all the objections to its validity may be properly tried and determined.

Where no such ground of objection is made to the filing of the award,

* Appeal from Appellate Decree No. 281 of 1882, against the decree of Baboo Nobin Chunder Ghose, Subordinate Judge of Mymensingh, dated the 15th December 1881, reversing the decree of Baboo Tara Prosunno Ghose, Second Munsiff of Attia, dated the 1st March 1880.

(1) L. R. 1 I. A., 34; 13 B. L. R., 254.