

1876
June 26.

APPELLATE CIVIL.

(*Mr. Justice Turner and Mr. Justice Spankie*).

TIMAL KUARI (PLAINTIFF) *v.* ABLAKH RAI AND OTHERS (DEFENDANTS).*

Act XVIII of 1873—Act IX of 1871, s. 15—Limitation.

Semble, that the provisions of s. 16, Act IX of 1871, are not applicable to suits or applications under Act XVIII of 1873.

This was a case stated by an Assistant Collector of the first class for the opinion of the District Judge. The case was as follows:—

The plaintiff was illegally ejected from certain land in or before the year 1873 and in January, 1876, made an application under s. 95, cl. (n), of Act XVIII of 1873 to recover possession of the same. The defendants raised the objection that, under cl. (e), s. 96, Act XVIII of 1873, applications under cl. (n), s. 95, could not be brought after six months from the date of wrongful dispossession, but as it appeared that the plaintiff had spent the time intervening between the date of his dispossession and the date of his application, prosecuting suits, for the recovery of the land, instituted by him in Courts which had no jurisdiction to try such suits, the Assistant Collector referred to the District Judge the question whether the provisions of s. 15, Act IX of 1871, apply to applications under Act XVIII of 1873 or not?

The District Judge decided that they did not apply either to suits or applications, relying on *Nona v. Dhoomun Dass* (1) and *Modhoo Soondun Mojoomdar v. Brojonath Koond Chowdhry* (2).

The plaintiff appealed against this decision to the High Court, contending that the Assistant Collector was not competent to make a reference under s. 204, Act XVIII of 1873, and that the decision was erroneous.

Mr. Conlan and Babu Baroda Parshad, for the appellant.

Lala Lalta Parshad, for the respondent.

* Miscellaneous Regular Appeal, No. 26 of 1876, against a judgment of the Hazipur, dated the 21st February, 1876.

* *N. P.*, 1873, p. 30. (2) *5 W. R.*, Act X Rulings, 44.

The judgment of the Court was as follows :—

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The appellant rightly contends that the Assistant Collector had no power to make the reference, and that consequently the Judge's opinion cannot be regarded as authoritatively binding on the Assistant Collector and the parties to the proceeding. It is not necessary for us to go on to consider the validity of the second plea, but we may notice that the opinion recorded by the Judge appears to be in conformity with the ruling of the Privy Council in *Unnoda Persaud Mookerjee v. Kristo Coomar Moitra* (1), in which it was held that the analogous provisions of s. 14, Act XIV of 1859, do not apply to suits instituted under Act X of 1859, because the latter is a special law. On similar grounds it was ruled in *Mahomed Bahadur Khan v. The Collector of Bareilly* (2) that the provisions of the Limitation Law relating to disability do not apply to enlarge the period of limitation prescribed by Act IX of 1859. We must, however, declare the reference to the Judge has no legal effect and his opinion cannot be held binding on the parties. We order the Judge to return the reference to the Assistant Collector, that it may be submitted through the proper channel should the Collector think fit to make a reference, and we shall direct each party to bear his own costs.

TIMAR KUARI
v.
ABLAKH RAI.

BEFORE A FULL BENCH.

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June 28.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield).

SHAM KUAR AND OTHERS (DEPENDANTS) v. GAYA DIN AND ANOTHER
(PLAINTIFFS). *

Hindu Law—Adoption—Inheritance.

An adopted son, under the Dattaka Mimansa and Mitakshara, succeeds to property to which his adoptive mother succeeded as the heiress of her father (3).

* Special Appeal, No. 923 of 1875, against a decree of the Judge of Azamgarh, dated the 11th June, 1875, reversing a decree of the Subordinate Judge, dated the 15th January, 1875.

(1) 15 B. L. R. 60 note; S. C., 19 W. R. 5; adopting the view taken by the Full Bench of the Bengal High Court in their decision in *Poulson v. Maahusudan Pal*, B. L. R., Sup. Vol., 101; S. C., 2 W. R., Act X Rulings, 21.

(2) L. R. 1 Ind. App. P. C. 167; S. C., 13 B. L. R. 292.

(3) See, however, besides the cases cited afterwards, *Chinnaramahristna Ayyar v. Minatchi Ammal*, 7 Mad. H. C. R. 245.