

1887 the threat on the part of his caste fellows to excommunicate
 him if he allowed her to continue in his house.
 Finding no reason for differing from the Sessions Judge, we
 must confirm the sentence of death, and dismiss the appeal.

FEROO MAHTO
 v.
 THE EMPRESS.

H. T. II. *Appeal dismissed and conviction upheld.*

APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Beverley.

1887
 April 4.

HORENDRA CHUNDRU GUPTA ROY AND OTHERS, MINORS, BY THEIR
 MOTHER AND NEXT FRIEND BUSUNTO KAMARI GUPTA (PLAINTIFFS)
 v. AUNOARDI MUNDUL AND ANOTHER (DEFENDANTS.)*

Limitation Act (XV of 1877), Sch II, Art. 127—Suit for possession by purchaser from sharer in joint family.

Art. 127 of Sch. II of Act XV of 1877 does not apply to a suit where the plaintiff is a stranger who has purchased a share in joint family property from one of the members thereof.

THIS was a suit to recover possession of a share in a taluk after establishing the right of the plaintiffs thereto. The share in question was alleged to have been purchased by the plaintiffs' father from one Chikani by a deed of sale, dated the 1st Cheyt 1280 (13th March, 1874), and to have formed portion of the property of Chikani's husband Baru, and to have been inherited by her on his death. The principal defendant, Aunoardi Mundul, the son of Baru, and step-son of Chikani, contested the suit, claiming the property to be his and in his possession, and impugning the deed of sale as a fraudulent document. He further contended that the suit was barred by limitation.

The plaint was filed on the 23rd January, 1885, and in the deed of sale there was an admission that Chikani, the vendor, was not then in possession. The first Court found as a fact, and this was not questioned in the lower Appellate Court, that Baru, from whom Chikani was alleged to have inherited, died not later than 1277 B.S., and both the lower Courts found that the plaintiffs

* Appeal from Appellate Decree No. 1565 of 1886, against the decree of H. T. Mathews, Esq., Judge of Mymensingh, dated the 28th of April, 1886, affirming the decree of Baboo Mohondro Nath Ghose, Munsiff of that District, dated the 25th of January, 1886.

had failed to prove that either Chikani had been in possession within 12 years of the date of suit or that they or their father had, at any time, since the date of the deed of sale, acquired possession.

Both Courts, therefore, agreed in dismissing the suit on the ground of limitation, and the first Court went further and found that the deed of sale was not a genuine document and dismissed the suit on the merits.

The plaintiffs preferred this second appeal to the High Court, and it was contended on their behalf that Art. 127 of Sch. II of the Limitation Act (XV of 1877) applied to the case, as the defendant Aunardi Mundul and Chikani formed members of a joint family, and that consequently the suit was not barred by limitation.

Baboo *Jogesh Chunder Roy* for the appellants.

Baboo *Mokund Nath Roy* for the respondents.

The judgment of the High Court (NORRIS and BEVERLEY, JJ.) was as follows:—

We are of opinion that this appeal must be dismissed. The only point urged before us is that the lower Courts are in error in holding that the plaintiffs' suit is barred by limitation, and the learned pleader for the appellants relies upon Art. 127 of Sch. II of the Limitation Act in support of his contention. We find, however, that in the case of *Ram Lakhi v. Durga Charan Sen* (1) it has been decided that that article will not apply to a case like the present, where a stranger has purchased the share of a member of a joint family, so that even supposing that the presumption which applies to a Hindu joint family would be applicable to the present case in which the parties are Mahomedans, we think that the contention relied upon by the pleader for the appellants must fail.

The appeal is therefore dismissed with costs.

H. T. H.

Appeal dismissed.

(1) I. L. R., 11 Calc., 680.

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