

Before Mr. Justice Ryves and Mr. Justice Stuart.

BHIKHARI DAS (PLAINTIFF) v. ABDULLAH (DEFENDANT).*

1922
May 2.

Act No. IX of 1908 (*Indian Limitation Act*), schedule I, article 11A—*Limitation*—Decree for possession—Resistance offered to decree-holder by third party—Suit for declaration that property is subject to decree.

Held that article 11A of the first schedule to the Indian Limitation Act, 1908, applies to a suit brought by a decree-holder for a declaration that certain specific property, possession of which was refused by the occupant, was covered by his decree. *Sardhari Lal v. Ambiku Pershad* (1) and *Ganpat Rai v. Husaini Begam* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi Haribans Sahai and Munshi Panna Lal, for the appellant.

Dr. S. M. Sulaiman, for the respondent.

RYVES and STUART, JJ.—The plaintiff appellant obtained a decree in 1913 for possession of certain property against certain persons and in execution of that decree he got possession of the major portion of the property in suit; but he was resisted by one Abdullah, who was not a party to the decree, on the ground that the premises in the possession of Abdullah were his own property and were not covered by the decree. The plaintiff applied to the executing court for possession against Abdullah but that court by an order dated the 31st of July, 1915, passed under order XXI, rule 99, upheld Abdullah's contention. This suit was brought in 1919 for possession of the property in Abdullah's possession. It has been dismissed on the ground that it was barred by limitation under article 11A of the first schedule to the Limitation Act. In appeal before us it has been argued that that article does not apply to a suit brought by a decree-holder. This point seems to us to be covered by *Sardhari Lal v. Ambika Pershad* (1). In that case their Lordships of the Privy Council held that the opening words of article 11 of the Limitation Act No. XV of 1877, namely "a person against whom" included the decree-holder. Article 11A contains words to the same effect and, therefore, the ruling of the Privy Council is equally applicable to this new article. This view was taken in this Court in *Ganpat Rai v. Husaini Begam* (2). Rule 103 of order XXI only enables a party other than a judgment-debtor against whom an order is made under rule 98 or 99 or 101 to

* Second Appeal No. 1461 of 1920, from a decree of Ganga Sahai, First Additional Judge of Aligarh, dated the 19th of July, 1920, modifying a decree of Ali Ausat, Subordinate Judge of Aligarh, dated the 18th of March, 1920.

(1) (1888) I. L. R., 15 Calc., 521.

(2) (1920) 19 A. L. J., 53.

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institute a suit to establish the right which he claims to the possession of the property. That, however, does not touch the question as to the period of limitation within which such a suit must be brought. In our opinion that is settled by article 11A of the present Limitation Act. In this view the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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May, 3.

CHATARPAL SHARMA (PLAINTIFF) v. JAGANNATH DAS (DEFENDANT).*

Act No. 1 of 1877 (Specific Relief Act), section 54—Injunction—Patent medicine—Sale by defendant of a medicine got up in such a manner as to lead customers to believe that they were buying a different medicine previously put on the market by the plaintiff.

Plaintiff had, for a number of years, been doing a large business in a medicine which he called "Sudha Sindhu," said to be a specific for cholera, asthma, cough and diarrhoea. This was sold in a bottle wrapped in two labels, an inner and an outer, the designs for which had been registered by the plaintiff. Defendant, apparently with the object of cutting into plaintiff's trade, produced a medicine which he called "Piyus Sindhu," also said to be a specific for the same diseases, and packed his medicine in bottles of the same size as the plaintiff's bottles, with an outer and an inner label, the labels being of such a design that, although when placed side by side with the plaintiff's labels certain differences were readily discernible, illiterate persons, such as formed the bulk of the plaintiff's customers, would most probably be led to believe that they were buying the plaintiff's medicine, which they knew, and which they intended to buy.

Held on suit by the proprietor of the "Sudha Sindhu" for an injunction, that, though there could be no injunction granted in respect of the name "Piyus Sindhu" or the use of a bottle of the particular size, the plaintiff was entitled to an injunction restraining him from selling or offering for sale his medicine "Piyus Sindhu" in any outside wrapper or inside label or with any instructions for use or advertisements in any form, calculated or intended to pass off or enable others to pass off such medicine as and for the medicine of the plaintiff.

Held also that the plaintiff was nonetheless entitled to an injunction because his medicine was, in the estimation of allopathic doctors, of no very great curative value, or because, though an allopathic medicine, it was described by a Sanskrit name.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. B. E. O'Connor and Munshi Navain Prasad Ashthana, for the appellant.

Dr. Surendra Nath Sen and Dr. Kailas Nath Katju, for the respondent.

MEARS, C. J., and BANERJI, J.—On the 19th of February, 1918, the plaintiff Chatarpal Sharma, a tradesman in Muttra, brought a suit against Lala Jagannath Das, also a tradesman, and also in Muttra. The plaintiff set out that

* First Appeal No. 38 of 1920, from a decree of Piari Lal Katara, Subordinate Judge of Muttra, dated the 7th of January, 1920.