

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Martineau.

ABDUL WAHAB (PLAINTIFF) Appellant

versus

1926

Jan. 27.

SECRETARY OF STATE (DEFENDANT) Respondent.

Civil Appeal No. 2145 of 1925.

Indian Limitation Act, IX of 1908, section 28, articles 144, 149—Suit against Secretary of State for declaration that plaintiff is the owner of certain immoveable property having gained a title by adverse possession.

Where plaintiff sues the Secretary of State for a declaration that he is the owner of certain immoveable property having gained a title thereto by adverse possession.

Held, that the suit must be decided with reference to article 149 of the Limitation Act, and that the plaintiff in order to succeed must prove that he has been in adverse possession for more than 60 years.

Second appeal from the decree of A. L. Gordon Walker, Esquire, District Judge, Lahore, dated 13th July 1925, affirming that of Lala Pars Ram, Subordinate Judge, IV class, Lahore, dated the 1st October 1924, dismissing the plaintiff's suit.

NIAZ MUHAMMAD, for Appellant.

D. R. SAWHNY, Public Prosecutor, for Respondent.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This second appeal arises out of an action brought by the plaintiff against the Secretary of State for India for a declaration that he was the owner of certain property. The defendant retorted that the property in dispute belonged to Government and that the plaintiff had no right to the declaration he craved unless he established that he had been in adverse possession for over 60 years with

reference to article 149 of the Limitation Act. It was admitted in the first Court that title lay with the Government and the plaintiff attempted to prove that he had been in adverse possession for over 60 years. On that point he has failed in both Courts below, and in second appeal the contention raised on his behalf is that article 149 refers to a suit brought by the Secretary of State and cannot be invoked as a bar to the plaintiff's suit. It is contended that the article governing the present suit is article 144.

Now, article 144 does not apply to the present suit. Article 144 governs a suit for possession of immoveable property and provides that such suit shall be brought within 12 years from the date when the defendant's possession becomes adverse. The present suit is not a suit for possession; it is a suit for a declaration that the plaintiff by prescription has become the owner of the property in litigation, and the suit must fail unless the plaintiff is able to show that he has been in adverse possession for more than 60 years for the simple reason that article 149 permits the Government to sue for recovery of property at any time within 60 years of the date when the right to sue accrues. Until that period has elapsed the Government's right in the property is not lost as provided by section 28 of the Limitation Act. Consequently the plaintiff is not entitled to the declaration he prays for, and we dismiss the appeal with costs.

A. N. C.

Appeal dismissed.

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