1904
JUNE 29, 30.
JULY 29.

PRIVY COUNCIL.

32 C. 129=31 I. A. 203=6 Bom. L. R. 765=8 C. W. N. 809=1 A. L. J. 586=8 Sar. 698.

dedicated property belongs to the sebait, and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the sebait, not in the idol. And in the present case the right to sue accrued to the plaintiff when he was under age. The case therefore falls within the clear language of s. 7 of the Limitation Act which says that: "If a person entitled to institute a suit . . . be, at the time from which the period of limitation is to be reckoned, a minor," he may institute the suit after coming of age within a time, which in the present case would be three years.

[142] It may be that the plaintiff's adoptive mother, with whom the settlement of 1877 was made as sebait, might have maintained a suit on his behalf and as his guardian. This is very often the case when a right of action accrues to a minor. But that does not deprive the minor of the protection given to him by the Limitation Act, when it empowers him to sue after he attains his majority. For these reasons their Lordships are unable to concur with the learned Judges in thinking that these suits are barred by limitation.

On behalf of the respondents their Lordships were asked to hold that the suits had been rightly dismissed on another ground altogether. It was contended that an examination of the Amin's map in the proceedings of 1864 and of that prepared in the present cases and a comparison of the two would show that they had been misunderstood and misapplied, and that it ought to have been held that the lands now claimed were not the same as those upon which the adjudication took place in the suit of 1864.

The question of identity is one of fact. In the pleadings that identity was alleged on one side and denied on the other. Express issues were raised upon it. The first Court found those isues in the affirmative. The question was raised again in the grounds of appeal to the High Court. And the learned Judges of the Court have deliberately concurred with the finding of the first Court upon this point. Their Lordships see no sufficient reason why these concurrent findings upon a pure question of fact should not be accepted.

Their Lordships will humbly advise His Majesty that the decree of the High Court should be discharged with costs, and that the decrees of the Subordinate Judge should be restored with the modification that in each decree, instead of wasilat being awarded for the period of claim, it be awarded for three years before suit.

The respondents will pay the costs of these appeals.

Appeals allowed.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitor for the respondents: *T. C. Summerhays.*

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32 C. 143 (=9 C. W. N. 179).

[143] ORIGINAL CIVIL.

Before Mr. Justice Harington.

In re NILMONEY DEY SARKAR.*

[27th September, 1904.]

Trust—Hindu Trusts—Indian Trustees Act (XXVII of 1866), applicability of, to Hindu trusts—Practice.

* Civil Application (Original Jurisdiction).

The Indian Trustees Act is applicable to a trust in which the settlor, the trustees and *cestuis que trustent* are all Hindus, provided such trust does not violate any provision of Hindu Law.

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ORIGINAL CIVIL.

32 C. 143=9 C. W. N. 179.

[Ref. 25 I. C. 480 ; 37 Cal. 870.]

THIS was an application by one Nemai Charan Dey Sarkar, the trustee, under a settlement under the Indian Trustees Act (XXVII of 1866) and the Trustees' and Mortgagees, Powers Act (XXVII of 1866), for an order to sell a portion of the trust premises in order to raise funds for repairing the trust premises and constructing connected privies in place of service privies in accordance with a notice of the Calcutta Corporation served on the trustee on the 13 August 1904.

Mr. N. Chatterjee, for one of the *cestuis que trustent*, raised a preliminary objection that the Indian Trustees Act did not apply to Hindus, but only to persons governed by the English law and that this application was contrary to the practice of this Court.

Mr. A. N. Chaudhuri, for the trustee (*contra*). There is no such practice in this Court. The Trustees Act gives trustees, in certain cases, liberty to apply for directions. Its aim is to give trustees an inexpensive and certain remedy.

The personal law of the Hindus has been left untouched by the English Law ; so that although they cannot create new rights in violation of the provisions of Hindu Law, yet the procedure that governs the determination of those rights is by English Law.

The words in the section "where English Law is applicale" simply mean that principles of English equity are applicable.

[144] The principles of English equity became a part of the law in this country under the Letters Patent of 1823, s. 21, and these principles therefore govern trusts amongst the Hindus.

This application would have been maintainable previous to the passing of Acts XXVII and XXVIII of 1866, and no suit need have been instituted for relief. Wherever the legislation in this country intends class distinction, the Acts contain sections defining the class for whom the Acts are intended, *e.g.*, the Indian Succession Act and the particular provisions in the Criminal Procedure Code relating to British-born subjects.

The application is, moreover, supported by authority, *Kahandas Narrandas, In re* (1), and an unreported order of Stephen, J. in the matter of a wakfnama. The present case is a stronger one, as the deed is in effect an English trust, and no religious or public purpose is involved in it. Section 539 of the Civil Procedure Code does not apply.

Mr. Chatterjee. In the case just cited, West, J., it is submitted, interpreted s. 3 of the Act in a wider manner than the specific language of the section warranted. Before 13 and 14 Vic. C. 60, suits were instituted in the English Courts under the Act of 1850, and summary powers were given to the Courts in England to try these matters. Before the passing of Act XXVII of 1866, suits were only instituted by persons governed by the English Law, and the Act specially says that it is applicable to such persons only. If it had been intended to apply to all persons living in British India, it would have said so in the preamble, and s. 3 would not have been inserted.

HARINGTON J. This is a petition presented by one Nemai Charan Dey Sarkar under the Indian Trustees Act (XXVII of 1866) praying leave

(1) (1881) I. L. R. 5 Bom. 154, 171.

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to sell a certain portion of certain trust premises for the purpose of raising money to pay for some necessary repairs.

The application is opposed on the ground that the Indian Trustees Act is by section 3 limited in its operation to those cases in which the English Law is applicable; it is said that that law is **[145]** not applicable to a trust in which the trustees and *cestuis que trustent* are all Hindus, and that, therefore, there is no jurisdiction to grant the application.

This argument rests on the proposition that English Law is inapplicable in the case of a trust created in a form valid under English Law if the settlor, the trustees and the *cestuis que trustent* are Hindus.

It has been considered that English Law, Civil and Criminal, was made applicable to Indians within the limits of Calcutta by the Charter, 13 George I, in so far as that law is not inconsistent with the Hindu or Mahomedan Law.

It cannot be said, therefore, that English Law is, of necessity, inapplicable in the present case; it must be shewn, to exclude the applicability of English Law, that the trust is one which violates some provision of Hindu Law. Had it been intended to exclude all Hindus from the operation of the Indian Trustees Act, I should have expected a clause like that contained in section 331 of the Succession Act.

The application is granted.

Attorney for the applicant : *J. N. Dutt.*

Attorneys for the opposite party : *Bonnerjee & Bonnerjee.*

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32 C. 146.

[146] CIVIL RULE.

Before Mr. Justice Brett and Mr. Justice Mookerjee.

ZAMIRAN *v.* FATEH ALI.*

[22nd November, 1904.]

Practice—Petition—Affidavit, necessity of—High Court Rules 1, 3 *&* 4, *Ch. XII—Civil Procedure Code (Act XIV of* 1882), *ss.* 17, 20, 57 *&* 622*—Cause of action—Plaint, return of—Jurisdiction—High Court, jurisdiction of.*

When a petition to the High Court states facts which are matters of record and which are supported by copies of the order passed by the Court below, such a petition need not be supported by an affidavit.

A brought a suit for dower in the Court of the Subordinate Judge of Saran alleging that the marriage as well as the divorce took place in that district. The defendant objecting to the suit on the ground that he worked and resided at Calcutta, the Subordinate Judge returned the plaint to be presented to the Presidency Small Cause Court. The District Judge, on appeal, declined to interfere with the order of the first Court :—

Held, that s. 17, cl. (*a*) of the Civil Procedure Code applied to the case; and the order returning the plaint was bad in law, the cause of action having arisen in the district of Saran.

Held, further, that inasmuch as the Subordinate Judge had failed to exercise jurisdiction vested in him by law by refusing to accept the plaint, and that the District Judge erred in law in confirming the decision of the first Court, the High Court had authority to interfere, under s. 622 of the Civil Procedure Code.

* Civil Rule No. 2602 of 1904, against the order of G. Gordon, District Judge of Chupra, affirming an order of Karuna Das Bose, Subordinate Judge of that district, dated Jan. 19, 1904.