

1869  
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Regulation X, of 1793, lays down a different period fixing the age of majority for all other persons; but it appears that this section and the law generally were fully considered by the Judges of the Full Bench, and it was considered that 18 years was the age of majority, not only for persons paying revenue to Government and taken under the Court of Wards, but for all other persons not European subjects. We are of opinion that the opinion expressed in that judgment is the correct law; and in that view we think it right to follow it.

The appeal is dismissed with costs.

*Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

1869  
 June 1.

MOHABAT ALI AND RAMAT ALI (PLAINTIFFS.) v. ALI MAHMED  
 KULAL (DEFENDANT).\*

*Disability of Heir—Limitation—Act XIV. of 1859, s. 11—Cause of Action.*

Under section 11, Act XIV. of 1859, the subsequent disability of an heir will not save a suit instituted after a lapse of 12 years from the date of cause of action, when such cause of action arose during the life-time of the ancestor.

Mr. G. A. Twidale for appellant.

Baboo Akhil Chandra Sein for respondent.

BAYLEY, J.—We think this special appeal should be dismissed with costs.

The plaintiff sued to establish his right derived from his father as the original purchaser of the property. The defendant claimed through one Shahmat Ali, who, he alleged, was a co-proprietor of the lands, and also pleaded limitation. The first Court gave the plaintiff a decree, holding that the defendants kabala was false, and that his possession was not proved.

The lower Appellate Court has clearly found as a fact, on the evidence that from five years before the plaintiff's father's death, in 1213, that is from the year 1209, the possession was with the defendant and those through whom he claimed, and that this was shown by several acts of ownership, such as the receipts of rent and the direct evidence in the case; and further that the title under which the defendant claimed, that is the kabala, was a good and a valid title.

In special appeal it is urged that the law of limitation has not been properly applied in this case, and that whereas the first Court has given several reasons for its decision, the lower Appellate Court has not given sufficient reasons to meet those of the first Court. Now the law of limitation that is applicable to this case is section 11, Act XIV of 1859, and that section says: "If at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such

\* Special Appeal, No. 179 of 1869, from a decree of the Subordinate Judge of Chittagong, dated 2nd December 1868, reversing a decree of the Moonsiff of Chokey, Futtickerry in that district, dated the 8th February 1868.

“ person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased ; but if at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.” Here it is quite clear that the cause of action arose to the plaintiff from the cessation of possession on the part of his father from whom he derived his title and as it has been clearly found as a fact that from more than 20 years before suit, i. e. five years before the plaintiff’s father’s death, neither the plaintiff nor his father had been in possession, the cause of action actually accrued to the plaintiff under the provisions of section 11 so as to bar the suit.

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MOHABAT ALI  
AND  
RAHMAT ALI  
v.  
ALI MAHMED  
KULAL.

The appeal is therefore dismissed with costs.

*Before Mr. Justice Macpherson and Mr. Justice E. Jackson.*

PRATAB CHANDRA BINWA (PLAINTIFF) v. RANI SWARNAMAYI (DEFENDANT.)\*

1869

June 2.

*Limitation—Mesne Profits.*

In a suit instituted after Act XIV. of 1859 came into force, mesne profits can only be recovered for the six years next preceding the institution of the suit.

A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided.

PLAINTIFF instituted a suit in 1851 to recover possession of certain lands, the final decision in which was not given in his favor till 31st July 1863. On the 27th September 1866, he sued for mesne profits of the lands, due from 1843, the date of his dispossession, to June 1866, the date of his re-entry in execution. The lower Court held that by clause 16, section 1, Act XIV. of 1859, plaintiff’s claim for mesne profits could not be admitted for a period over six years—*Baboo Ishoree Nundi Dutt v. Parbutty Churn Jha* (1) ; and further that plaintiff could not sue by regular suit for the mesne profits accruing between the institution of his suit for possession and the execution of his decree. *Chennappa Nayadu v. Pitchi Reddi* (2).

Mr. R. T. Allan and Baboos Anukul Chandra Mookerjee and Tarini Bhutacharjee for appellant.

Baboos Srinath Das and Bhagabati Charan Ghose for respondent.

\* Regular Appeal, No. 23 of 1869, from a decree of the Deputy Commissioner of Gawalpara, dated the 27th November 1868. •

(1) 3 W. R., 13.

(2) 1 Mad. H. C. Rep., 453.