

The Weekly Reporter,

APPELLATE HIGH COURT

The 3rd January 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, Chief Justice, and the Hon'ble L. S. Jackson, Judge.

Estoppel—Hindoo Law of Inheritance—Decrees against Sisters.

Case No. 2123 of 1866.

Special Appeal from a decision passed by Mr. E. S. Pearson, Judge of Tirhoot, dated the 29th May 1866, affirming a decision passed by Syud Emdad Ali, Principal Sudder Ameen of that District, dated the 18th April 1865.

Joygobind Sohay (Defendant), *Appellant*,

versus

Mahtab Koonwar (Plaintiff), *Respondent*.

Mr. R. E. Twidale for Appellant.

No one for Respondent.

The survivor of several Hindoo sisters is not bound by decrees obtained against her sisters during their lives whose interest was only a life-interest in their father's property which, on their death, passed to the survivor as heir of her father.

Peacock, C.J.—THE plaintiff in this case claims as heir of her father. She does not claim as heir of her sisters; and, although she and her sisters took the estate as heirs of the father, still her sisters had merely the right which a female takes by inheritance, namely, a right which continues only during her life. The sisters could not transmit the estate to their heirs, but the estate upon their death passed to the plaintiff as the heir of her father. Therefore, the plaintiff is not bound by the decrees which were obtained against the sisters during their lives.

The decree of the Lower Appellate Court is affirmed, but without costs, no one appearing for the respondents.

The 3rd January 1867.

Present :

The Hon'ble Sir Barnes Peacock, *Kt.*, Chief Justice, and the Hon'ble L. S. Jackson, Judge.

User.

Case No. 2189 of 1866.

Special Appeal from a decision passed by Mr. O. Toogood, Judge of Beerbhoom, dated the 4th June 1866, reversing a decision passed by Baboo Kedaressur Roy, Moonsiff of Gopalpore, dated the 23rd February 1866.

Mooktaram Bhuttacharjee (Plaintiff),
Appellant,

versus

Hurro Chunder Roy and another (Defendants), *Respondents*.

Baboo Roopnath Bannerjee for Appellant.

No one for Respondents.

A user *all along* or *from before* does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained.

Peacock, C.J.—WE think that what the Judge means to say is that, looking at the evidence, it does not prove a right. He says "a prescriptive right," but he means a right which the plaintiff has acquired by usage. Then the question is, was it proved that he had got a right by usage? The 1st issue was whether the lands have been all along irrigated. But the expression "all along" is very indefinite. The Ameen, who was sent to make the local enquiry, says that the right was exercised *from before* which is equally indefinite. It does not show how long before. Probably, it means from before the occasion when the defendant admits it to have been exercised. A user *all along* or *from before* does not necessarily prove a