

The result is, that this appeal will be allowed with costs, and that the decree of the lower Court will be reversed. Appellant will also have her costs in that Court.

Appeal allowed.

1878
 ALUKMONEE
 DABEE
 v.
 BANER
 MADHUB
 CHUCKER-
 BUTTY.

Before Mr. Justice White and Mr. Justice Mitter.

ESHAN CHUNDER ROY AND OTHERS (DEFENDANTS) v. MONMOHINI
 DASSI (PLAINTIFF).*

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 Nov. 22.

*Limitation Act (IX of 1871), Sched. II, Arts. 118, 131—Right to exclusive
 Worship of Idol—Right to turn of Worship of Idol.*

In a suit brought in 1875, in which the plaintiff claimed, as heir of her husband, a share in a certain taluk together with exclusive right of worship of an idol *A*, and the right to the worship of an idol *B*, for one-sixth of every year, from the possession and enjoyment of which she alleged she had been dispossessed by the defendants in 1866,—*held*, that her claim, as to the idol *B*, came under the provision of Art. 131 of Act IX of 1871, and was not barred; but as to *A*, the claim was governed by Art. 118 of the same Act, and, not having been preferred within six years, was barred by lapse of time.

In this case the plaintiff sued for possession of a share of a certain taluk, and to establish her right as shebait to two family idols—Shalgram Thakur and Sri-Sri Sham Roy—as to the former of which, she claimed the exclusive right of worship, and as to the other, the right to worship it for one-sixth part of the year.

The plaintiff alleged that the share of the taluk and the right to possession and worship of the idols belonged to her husband by inheritance, and the property and idols were in his possession, and the rights of worship exercised by him, until he died on the 21st Assar 1273 (4th of July 1866), having given the plaintiff permission to adopt, and leaving her his sole

* Appeal from Appellate Decree, No. 2534 of 1877, against the decree of E. S. Moseley, Esq., Officiating Judge of Zilla Mymensingh, dated the 22nd of August 1877, modifying the decree of Baboo Nobin Chunder Ghose, Roy Bahadur, Second Subordinate Judge of that District, dated the 9th of March 1876.

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heir; that she and her husband and the defendant had lived together in her husband's house, but shortly after his death the defendants had dispossessed her of her right to live in her husband's house, and forced her to live elsewhere, and prevented her from performing the worship of the idols since the month of Aughran 1273 (15th of November to 14th December 1866). The plaint was filed on the 8th of September 1875.

The defendants alleged that since the death of the plaintiff's husband she had never performed the worship of the idols, and submitted that her claim to the worship, and to the taluk which was set apart for such worship, was barred by limitation.

They also alleged that the plaintiff left her husband's house and went to reside elsewhere of her own accord, and that under a will which her husband had left she was bound to comply with certain provisions therein stated, and that she had by her conduct forfeited her rights in her husband's property.

The Subordinate Judge decreed the plaintiff's claim in full. On appeal, the Judge held that, to the claim to the worship of the idol Sri-Sri Sham Roy, Art. 131 of Act IX of 1871 was applicable, and, therefore, it was not barred; but, as to the claim to the worship of the idol Shalgram Thakur, he held that either Art. 35 or Art. 118 applied to it, and in either case it was barred by lapse of time. He, therefore, modified the decree of the Subordinate Judge by disallowing the latter claim.

From this decision the defendants appealed, and the plaintiff took an objection that the claim, as to the idol Shalgram Thakur, was not barred.

Baboo Mohiney Mohun Roy and Baboo Kishory Mohun Roy for the appellants.

Baboo Sreenath Dass and Baboo Jogesh Chunder Dey for the respondents.

The judgment was delivered by

MITTER, J. (WHITE, J., concurring).—The plaintiff in this case seeks to recover possession of a share in a certain taluk, and to establish her right of worshipping two idols mentioned

in the plaint. The taluk and the right of worshipping the idols are claimed by the plaintiff as heir of her husband. As regards one of the idols, she claims the right of exclusive worship, and as regards the other, only during one-sixth of the year.

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The defendants pleaded limitation to the whole claim, and, upon the merits, alleged that under a will executed by her husband the plaintiff by her conduct has forfeited her rights.

The Court of first instance overruling both these objections decreed the claim in full. On appeal the District Judge has upheld that judgment, except as regards the idol Shalgram Deo, the idol which the plaintiff claimed to worship exclusively.

The defendants have preferred this appeal, and contend that the lower Courts have misconstrued the terms of the will, and that the plaintiff's claim regarding the other idol (Sri-Sri Sham Roy) is also barred by limitation.

I do not think that the objections are tenable. It seems to me that the Courts below have put a right construction upon the terms of the will executed by the husband of the plaintiff.

As regards the question of limitation raised by the defendants, special appellants, I am also of opinion that the decision of the lower Courts is correct. The plaintiff's claim, so far as the right of worship of the idol Sri-Sri Sham Roy is concerned, is clearly brought within the purview of Art. 131 of the Limitation Act of 1871.

The plaintiff has taken an objection before us against that part of the decision of the lower Appellate Court, which has gone against her. It has been argued that the claim, regarding the worship of the idol Shalgram, has been erroneously held as barred by limitation. The present suit is admittedly brought more than six years after the accrual of the cause of action, and unless the right in question is in the nature of an interest in immoveable property, the plea of limitation cannot be got over. After giving to the matter our best consideration, we are unable to come to the conclusion that the right of worshipping an idol is in the nature of "an interest in immoveable property." The plaintiff's objection to the decision of the lower Appellate Court must, therefore, also fail.

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As the plaintiff and the defendants have both failed in this Court, we think there should be no order for costs in this special appeal (1).

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Jackson, and Mr. Justice Pontifex.

1879
Feb. 5.

BUSSUN LALL SHOOKUL (DEFENDANT) v. CHUNDEE DASS AND OTHERS (PLAINTIFFS).*

Res Judicata—Suit for Arrears of Rent.

A brought a suit against *B* for arrears of rent. *B* admitted the sum claimed, but contended that the rent was due for a larger area of land than that specified in the plaint. An issue was framed on such contention, and decided against *B*. In a subsequent suit by *B* to have it declared that a sum of money, equal in amount to the sum paid on admission in the former suit, comprised the rent due on all the lands held by him under *A*. Held (on appeal under the Letters Patent, reversing the decision of the Court below), that such suit was barred as being *res judicata*.

THIS was a suit for a declaration of the plaintiffs' right to a mourasi taluk comprising 8 drones, 7 kanis, and 2 gundas of land bearing a rental of Rs. 105-9-16½. The plaint alleged that the defendant, landlord, had in the year 1874 brought a suit for arrears of rent against the present plaintiffs, alleging that the said sum of Rs. 105-9-16½ represented the rental of only 4 drones, 7 kanis, 19 gundas of the whole of the lands, the subject of the present suit; that the Court in that suit framed an issue regarding the actual area of the taluk, but, on the 29th June 1874, gave the then plaintiff, the present defendant, a decree for the rent claimed; that this decree having thrown

(1) See the case of *Gaur Mohan Chowdhry v. Madan Mohan Chowdhry* 6 B. L. R., 352, decided under the Limitation Act XIV of 1859, in which it was held that the right to a turn of worship of an idol was not a recurring cause of action, but was governed by s. 1, cl. 16, of that Act.

* Appeal No. 2 of 1878, under s. 15 of the Letters Patent, against the judgment of Mr. Justice Romesh Chunder Mitter, and Mr. Justice Maclean, dated the 9th July 1878, in Special Appeal, No. 309 of 1877.