

(1917) 06 CAL CK 0034
In the Calcutta High Court

Abdul Majid Mian and Another

APPELLANT

Vs

Baksha Ali and Others and Srimaty Halimannessa
Chowdhurani and Others

RESPONDENT

Date of Decision : 19-06-1917

Acts Referred:

Citation : 40 Ind. Cas. 662

Hon'ble Judges : Richardson, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The question involved in this appeal is whether the lower Appellate Court was right in holding that the suit was not barred by limitation.
2. The plaintiff purchased the land in suit in the year 1901 and obtained symbolical possession in 1907. The present suit was instituted on the 18th May 1912. The defendants Nos. 14 and 15 who are the appellants in this Court pleaded that they had obtained a settlement of the land from the landlord in the year 1898 and had been in possession of the land ever since in their own right.
3. The Court of first instance found that the plaintiff was never in possession and dismissed the suit. On appeal the learned District Judge was of opinion that the suit was not barred by limitation because it was instituted within twelve years of the date of the confirmation of sale.
4. But if, as the defendants allege, they were in possession of the land from before the date of the sale and for a period of twelve years under an independent title, the plaintiff's claim cannot be saved from limitation merely because he brought the suit within twelve years of the date of the sale. Article 138 of the Limitation Act prescribes a period of twelve years from the date of the sale for a suit by a purchaser of land at a sale in execution of a decree for possession of the purchased land when the judgment-debtor was in possession at the date of the sale. It is necessary, therefore, to find whether the judgment-debtors whose interest the plaintiff purchased at the execution sale was in possession, or

whether the defendants Nos. 14 and 15 were in possession from before the date of the sale under an independent title.

5. The decree of the lower Appellate Court must be set aside and the case sent back to that Court in order that the question may be decided in the light of the observations made above and the appeal disposed of accordingly. Costs will abide the result.