
(1922) 05 AHC CK 0020
In the Allahabad High Court

Bhikhari Das

APPELLANT

Vs

Abdullah

RESPONDENT

Date of Decision : 02-05-1922

Acts Referred:

Citation : AIR 1922 All 403 : (1922) ILR (All) 607 : 68 Ind. Cas. 241

Hon'ble Judges : Stuart, J; Ryves, J

Bench : Division Bench

Judgement

Ryves and Stuart, JJ.—The plaintiff appellant obtained a decree in 1913 for possession of certain property against certain persons and in execution of that decree he got possession of the major portion of the property in suit; but he was resisted by one Abdullah, who was not a party to the decree, on the ground that the premises in the possession of Abdullah were his own property and were not covered by the decree. The plaintiff applied to the executing court for possession against Abdullah but that court by an order dated the 31st of July, 1915, passed under Order XXI, Rule 99, upheld Abdullah's contention. This suit was brought in 1919 for possession of the property in Abdullah's possession. It has been dismissed on the ground that it was barred by limitation under Article 11A of the first schedule to the Limitation Act. In appeal before us it has been argued that that article, does not apply to a suit brought by a decree-holder. This point seems to us to be covered by Sardhari Lal v. Ambika Pershad ILR (1888) Cal. 521. In that case their Lordships of the Privy Council held that the opening words of Article 11 of the Limitation Act No. XV of 1877, namely "a person against whom" included the decree-holder. Article 11A contains words to the same effect and, therefore, the ruling of the Privy Council is equally applicable to this new article. This view was taken in this Court in Ganpat Rai v. Husaini Begam (1920) xix L.L.J. 53. Rule 103 of Order XXI only enables a party other than a judgment-debtor against whom an order is made under Rule 98 or 99 or 101 to institute a suit to establish the right which he claims to the possession of the property. That, however, does not touch the question as to the period of limitation within which such a suit must be brought. In our opinion that is settled by Article 11A of the

present Limitation Act. In this view the appeal fails and is dismissed with costs.