
(1920) 02 CAL CK 0035
In the Calcutta High Court

Biswambar Halder

APPELLANT

Vs

Giribala Dasi and Another

RESPONDENT

Date of Decision : 17-02-1920

Acts Referred:

Limitation Act, 1963 — Article 120, 10

Citation : AIR 1921 Cal 571 : 58 Ind. Cas. 877

Hon'ble Judges : Newbould, J; Asutosh Chaudhri, J

Bench : Division Bench

Judgement

1. There is no contest now that the plaintiff is entitled to one-sixth share only. As regards the joint family properties, the only question which was raised was in respect of properties Nos. 21, 23 and 27 of Schedule ka to the plaint. We think the learned Subordinate Judge has correctly found that these properties were acquired in the lifetime of defendant No. 1's father, Gobinda, apparently in the benami name of Prosonno Banerjee, with the income of ijmal properties, that, therefore, it must partake of the nature of a joint family estate, and that the plaintiff is entitled to her share therein.

2. The next question raised before as is as regards the accounts against the defendant. The learned Subordinate Judge has rightly held that for the period of Gobinda's management, the defendant No. 1--his son--is not liable. Gobinda died on 1314. The learned Judge holds, however, that the defendant No. 1 is liable to account from 1314 and relies upon the case of Annamalai Chetty v. Murugasa 7 C.W.N 754 : 26 M. 544 : 30 I.A. 220 : 8 P.C.J. 523 : 13 M.L.J. 287 : 5 Bom. L.R. 494 (P.C.) in which their Lordships say that the relation between the manager of a joint family and the other members of that family is not that of principal and agent but it is much more like that of trustee and cestui que trust; and he miterers from that expression of opinion that Section 10 of the Limitation Act governs suits for account against a karta. He has overlooked that Section 10 says that the property must be vested in trust in the trustee for a specific purpose; and it has been held in this Court repeatedly that it does not apply to

an implied trust, but to an express trust. In no sense can it be said that a karta of a Hindu family is vested with the property belonging to a joint family. There is no express provision in the Limitation Act as regards such suits and it has always been held that Article 120, which provides six years' limitation, applies to such suits. To this extent we vary the decree of the Court below, that is to say, the plaintiff will be entitled to accounts only for a period of six years prior to the institution of the suit.

3. With this modification, we dismiss the appeal with costs, Taking into account that accounts for more than six years have not been allowed to the plaintiff, we assess the hearing fee at rupees two hundred and fifty only.