

(1888) 07 CAL CK 0005
In the Calcutta High Court

Chintamoni Mahapatro

APPELLANT

Vs

Sarup Se and Another

RESPONDENT

Date of Decision : 05-07-1888

Acts Referred:

Limitation Act, 1963 — Section 10

Citation : (1888) ILR (Cal) 703

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

Norris, J.—We think that the finding of the lower appellate Court to the effect that this case is not governed by Section 10 of the Limitation Act is correct. The meaning of that section, as I understand it, is to declare that as a general rule trust property shall not be subject to any law of limitation; that no length of time shall bar an action to recover such property ; but that when trust property finds its way into the hands of an assignee for valuable consideration, the ordinary law of limitation shall apply; that the assignee shall have the same benefit as an ordinary purchaser of property, not trust property, would have. In this case the defendant was an auction-purchaser; and the question is, whether he is an assignee within the meaning of Section 10. We think that the lower appellate Court has rightly held that an auction-purchaser is an assignee within the meaning of that section. It was suggested by the learned pleader for the appellant that the word "assigns" must be read as governed by the word "his" in the section; and that the assignee must be a direct assignee of the trustee.

2. I do not think we should be justified in, nor is there any authority for, giving that limited meaning to Section 10. We think that the Subordinate Judge was quite right in the view he took of Section 10.

3. Whether article 134 or Article 144 applies to this case, I do not think it is necessary for us to express any opinion at all. If the Subordinate Judge is wrong in thinking that Article 134 is wide enough to cover the case of an auction sale, at any rate, it is admitted that Article 144 applies; and if Article 144 applies, the

plaintiff's claim is barred, as the Subordinate Judge finds that the cause of action accrued to the plaintiff's father more than 12 years before suit.

4. The appeal must therefore be dismissed with costs.