

(1916) 06 CAL CK 0020
In the Calcutta High Court

Chintamoni Patni and Another

APPELLANT

Vs

Tarak Chandra Goswami Represented by his Guardian ad
litem Mother Nagendra Bala Debi

RESPONDENT

Date of Decision : 05-06-1916

Acts Referred:

Specific Relief Act, 1877 — Section 42

Citation : 35 Ind. Cas. 17

Hon'ble Judges : Teunon, J;Sheepshanks, J

Bench : Division Bench

Judgement

1. In this case it appears that a certain Hindu widow died sometime about the year 1910, leaving certain ornaments and also a considerable sum in cash. Upon her death there followed certain proceeding under Act XIX of 1841 between the present plaintiffs-appellants, who are stated to be the sons of the widow's husband's brother, and the defendant-respondent, who is stated to be a descendant of her spiritual guide. In these proceedings the District Judge made over the properties to the present plaintiffs. The defendant thereupon made an application to this Court and that application resulted in the setting aside of the proceedings taken under Act XIX of 1841, in a direction that the parties should establish their title in the Civil Court and in the following order: "The Court will, no doubt, take the steps necessary for the protection of the property pending the disposal of the suit." The ornaments were thereupon returned by the plaintiff and are now in the hands of the Receiver appointed by the Court. The cash is either in the plaintiff's possession or has been spent, as he says, by him. He has now brought a suit u/s 42 of the Specific Relief Act praying for a declaration of his title to the ornaments and the cash. Both the Courts below have thrown out that suit, on the ground that in the absence of a prayer for possession the suit is not maintainable by reason of the proviso to Section 42 of the Specific Relief Act. We are of opinion that in taking this course the Courts below fell into error. The cash is clearly in the possession of the plaintiff or for the purposes of this suit is to be regarded as in his possession and the ornaments are in the possession of an

officer of the Court, and should the plaintiffs succeed in establishing their title that possession may be considered to, be the plaintiffs possession. In any Case it is clear that a declaration would be sufficient to give the plaintiffs all the relief that would be necessary for them-in this matter. In support of the view we take we may refer to the cases of Vedanayaga Mudaliar v. Vedammal 27 M. 591 and Aisa Siddika v. Bidhu Sekhar Banerjee 18 Ind. Cas. 633 : 17 C.L.J. 30. We, therefore, set aside the decrees of the Courts below and remit the case to be re-admitted in the Court of first instance and heard and determined on the merits. The costs in all Courts will abide the result.