
(1915) 01 CAL CK 0020
In the Calcutta High Court

Dwarka Nath Dass and Another

APPELLANT

Vs

Monmohan Topedar

RESPONDENT

Date of Decision : 22-01-1915

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : AIR 1915 Cal 759(1) : 30 Ind. Cas. 34

Hon'ble Judges : Mullick, J;Holmwood, J

Bench : Division Bench

Judgement

1. This was a Rule calling upon the opposite party to show cause why the order of the Small Cause Court, dismissing a suit for limitation, should not be set aside.
2. The case is one which clearly falls u/s 22 of the Limitation Act; and the question is whether it can be said that a pro forma defendant, who was joined at the institution of the suit and who is made a plaintiff after the period of limitation, can be brought within the meaning of Section 22 of the Limitation Act as a new plaintiff. On the authority of several cases, first of all the case of Nagendrabala Debya v. Tarapada Acharjee 4 Ind. Cas. 369 : 35 C. 1065 : 8 C.L.H. 286 : 13 C.W.N. 186 : M.L.T. 91 then that of Husainara Begum v. Rahmannessa Begum 8 Ind. Cas. 837 : 38 C. 342 : 13 C.L.J. 3 and lastly that of Narsinha Krishnaji v. Vaman Vankatesh Dcshpande 4 Ind. Cas. 249 : 34 B. 91 : 11 Bom. L.R. 1102 we are of opinion that the rule, that a party transferred from the side of the defendants to that of the plaintiffs is not a new party to whom the provisions of Section 22 of the Limitation Act apply, is an absolute rule and cannot be distinguished in the way in which the learned Pleader for the opposite party has sought to distinguish it upon certain remarks in the case of Nagendrabala Debia v. Tarapada Acharjee 4 Ind. Cas. 369 : 35 C. 1065 : 8 C.L.H. 286 : 13 C.W.N. 186 : M.L.T. 91. No such limitation was placed upon it by the Judge who presided over the Bench which issued the Rule in delivering the judgment in the case of Husainara Begum v. Rahmannessa Begum 8 Ind. Cas 837 : 38 C. 342 : 13 C.L.J. 3. On the contrary, he pointed out that the person

who was transferred from the category of defendant to the category of plaintiff could not have maintained the action at the time the suit was instituted; and in the Bombay case Narsinha Krishnaji v. Vaman Vankatesh Deshpande 4 Ind. Cas. 249 : 34 B. 91 : 11 Bom. L.R. 1102 the rule is stated without any qualification whatever.

3. With regard to the case of Nagendmbala Debya v. Tarapada Acharjee 4 Ind. Cas. 369 : 35 C. 1065 : 8 C.L.H. 286 : 13 C.W.N. 186 : M.L.T. 91 to which one of us was a party, we certainly did not intend to lay down that the circumstance mentioned, namely, that the original plaintiff had a right to enforce his interest as co-sharer, should in any way affect the rule which we laid down in the same terms as it was laid down in the subsequent cases.

4. We are, therefore, of opinion that this Rule must be made absolute. The case will lie remanded to the lower Court for a decision on the merits.

5. The petitioners are entitled to the costs of this hearing, which we assess at two gold mohurs.