

(1910) 05 AHC CK 0055
In the Allahabad High Court

Ganpat Singh and Others

APPELLANT

Vs

Musai Singh

RESPONDENT

Date of Decision : 12-05-1910

Acts Referred:

Citation : 6 Ind. Cas. 695

Hon'ble Judges : Banerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Banerji, J.—The only question in the appeal is whether the claim of the plaintiffs-appellants is or is not time-barred. The property in dispute is a part of a cultivatory holding which belonged to one Ganga Bishen He died leaving four sons, namely, Ram Lal the father of the plaintiffs, Pahalwan, the grand father of the defendant and Sundar Singh and Debi Singh, who predeceased their brothers, leaving them surviving their widows Musammats Rakeba Kunwar and Param Sundar respectively. In 1871 there was litigation between Ram Lal, Pahalwan and the two widows with the result that the widows were given their husbands' shares to be held for life for their maintenance and that those shares were to pass equally to Ram Lal and Pahalwan upon the death of the widows. The two widows are now dead and the plaintiffs claim a half share of the property which stood in their names but of which the defendant has taken exclusive possession upon the death of the widows. The plaintiffs alleged in their plaint that their title to possession accrued on the death of the widows, which according to them took place eight years ago, and that the defendant was not entitled to possession of the whole of the property in suit. The Court of first instance found, and its finding has been affirmed by the lower appellate Court, that the widows died more than twelve years before the institution of the suit. Both the Courts below also found that since the death of the widows, the defendant has been in possession to the exclusion of the plaintiffs. Those Courts have accordingly held the claim to be time-barred and have dismissed the suit. It

is contended in this appeal that the possession of the defendant cannot be deemed to be adverse to the plaintiffs unless the defendant set up an adverse right and that the possession of the defendant must be deemed to be the possession of the plaintiffs. I cannot agree with this contention. The right of the plaintiffs to possession accrued, as they themselves admit, upon the death of the widows. As the ladies died more than twelve years before suit, more than twelve years have elapsed since the date of the accrual of the plaintiffs' right. For more than twelve years the defendant has excluded the plaintiffs from possession to their knowledge. The Court of first instance found that the parties were at arm's length and the correctness of this finding was never challenged in appeal. It is thus clear that the possession of the defendant was adverse to the plaintiffs. The only question, which the plaintiffs raised in their appeal to the Court below, was the question of the date of the death of the widows and all they asserted was that more than twelve years had not elapsed from the date of their death. On this point the finding was against them. It is now attempted to set up a case which was not asserted in the lower appellate Court. Having regard to the findings, I hold that the claim of the plaintiffs was time-barred and the rulings on which the learned Vakil for the appellants relied are inapplicable. I accordingly dismiss the appeal with costs including fees on the higher scale.