

(1869) 03 CAL CK 0032
In the Calcutta High Court
Case No : Special Appeal No. 2406 of 1868

Gobind Chandra Sarma Mazoomdar	APPELLANT
Vs	
Anand Mohan Sarma Mazoomdar and Others	RESPONDENT

Date of Decision : 10-03-1869

Acts Referred:

Citation : (1869) 03 CAL CK 0032

Judgement

Hobhouse, J.—In this case the plaintiff sued for possession of a certain property. He alleged that sometime previous to the year 1256 (1849) this property was held by one Shib Chandra Sarma and the Sanna defendants, as members of a joint family. One Rambha, widow of Shib Chandra, succeeded to Shib Chandra's rights in the property sometime before the year 1255 (1848), and in that year, the plaintiff alleged, that by a batwara then made, the present property in dispute fell to his mother's share of the joint family property. He then stated that the Sarma defendants dispossessed his mother in the year 1256 (1849); that he, by permission of his father, was adopted by his mother in the year 1258 (1851); that he was then a minor, and so continued up to the year 1272 (1865); that in that year he came of age, and this suit was filed on the 21st Aswin 1273 (September 1866).

2. The defendants objected that, inasmuch as the cause of action commenced to run from the year 1256 (1849), and inasmuch as the plaintiff had not sued until the year 1273 (1866), the plaintiff was out of Court by the application of the Statute of Limitation. On the other hand, the plaintiff pleaded the special protection afforded by the provisions of Section 11, * Act XIV of 1859. The lower Appellate Court has held, that the suit is barred by the application of the Statute of Limitations.

3. In appeal the plaintiff urges, that, as he was not adopted until the year 1258 (1851), so his cause of action did not arise until that year, and that, as from that year until the year 1272 (1866) he was a minor, and as he sued within one year of his coming of age, so he was within time under the provisions of Section 11,

Act XIV of 1859.

4. The pleader, for the special appellant, puts the case in this way: He says that when Shib Chandra died, he gave his widow, Rambha, permission, that is a direction to adopt; that in furtherance of that permission, or direction, the said Rambha did adopt, and that by reason of this permission, or direction, the said Rambha, between the years 1256 (1849) and 1258 (1851) must be supposed to have held the estate, not as a person fully representing it, but in trust for a son about to be adopted. We think, however, that this reasoning is not conclusive, because although there was a permission, or direction, to adopt, still it does not follow that the person to whom this permission, or direction, was given was legally bound to act upon it, or that she might not be, for many reasons, unable to carry it out. She might not, for instance, have been able to find any person fit or willing to accept the place of an adopted son, and the pleader for the special appellant admits that no one could legally compel her to adopt. We cannot, therefore, hold that, when there is a permission, or direction, to adopt a son, a widow can be said to hold her husband's estate only in trust for the son to be adopted; and the question really is as to whether Rambha, in the year 1256 (1849) did herself fully represent the estate of Shib Chandra.

5. We think that the case, *Gobind Coomar Chowdhry v. Hurochunder Chowdhry* (7 W.R., 134), is conclusive against the special appellant, on this point; and that that case so completely exhausts the subject before us, that we think we cannot do better than adopt it without any further arguments. We may add, however, that what is called the *Shiva Ganga* case, *Katama Natchier v. The Rajah of Shiva Gunga* (9 Moore, I.A., 534); and another case, *Nabin Chandra Chuckerbutty v. Iswar Chandra Chuckerbutty* (Case No. 460 of 1867, 29th April, 1868), are strongly in point, as cases from which we may deduce that the ruling of the Division Bench of this Court before referred to, which we are now following, is strictly accurate and good in law. The special appeal is dismissed with costs.

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Computation of period of limitation in case of legal disability.

Sec. 11:--If at any time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if, at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal disability of any person claiming through him.