
(1896) 03 CAL CK 0013
In the Calcutta High Court

Jogendra Kishore Roy Chowdhry

APPELLANT

Vs

Brojendra Kishore Roy Chowdhry and Bisseswari Debi
Chowdhurani

RESPONDENT

Date of Decision : 23-03-1896

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Limitation Act, 1963 — Article 47

Citation : (1896) ILR (Cal) 731

Hon'ble Judges : W. Comer Petheram, C.J.; Trevelyan, J; Rampini, J; Macpherson, J; Ghose, J

Bench : Full Bench

Judgement

W. Comer Petheram, C.J., Macpherson, Trevelyan, Ghose and Rampini, JJ.—This reference arises out of a special appeal, and under the rules of the Court it is necessary that this Bench, in addition to answering the question referred, should dispose of the special appeal.

2. The Subordinate Judge, who heard the first appeal, states the facts of the case as follows:

This was a suit to recover possession of a plot of land by declaration of the appellant's title thereto, the appellant claiming the said land as appertaining to a hat called Naraingunge, alias Lakhigunge, situate in his zemindary No. 78. It appears that there was a proceeding with regard to the land u/s 145 of the Criminal Procedure Code between the appellant on the one side and the defendant No. 1, Bisseswari Debi Chowdhurani, on the other, and the Deputy Magistrate of the Sub-Division of Netrokona passed an order on the 9th of April 1888 retaining Bisseswari Debi in possession of the land.

3. The plaint in the present suit was filed on the 9th May 1891.

4. Towards the end of his judgment the Subordinate Judge proceeds: "The deposition of the witness Guru Das Chuckerbutty as well as the documents filed

in the appeal show that Bisseswari Debi claimed a life-interest in 8 annas share of the Gouripur Estate under the will of her husband, though she was in possession as executrix of the whole estate. Subsequently Bisseswari Debi and the defendant No. 1, who is her adopted son, entered into a compromise by which a annas share of the estate was allowed to Bisseswari to be enjoyed during her lifetime, while the remaining 12 annas share was given up to the defendant No. 1. The latter also got the land in dispute with other properties in his share by partition. "

5. Upon these facts both the Munsif and the Subordinate Judge have dismissed the suit as barred by limitation, it having been brought more than three years after the final order of the Deputy Magistrate. The case came before the Division Bench of this Court in second appeal, and the learned Judges who constituted that Bench, feeling themselves unable to agree with the decision of this Court in the case of Aukhil Chunder Chowdhry v. Mirza Delawar Hossein (6 C.L.R. 93), have referred the question to the Full Bench "whether, as laid down in that case, Article 47 of Schedule II of the Limitation Act applies only between the parties whose possession was confirmed by the Magistrate and each one of the parties to that proceeding who was claiming possession against them, or whether it applies to any person bound by an order respecting that property made u/s 145 of the Criminal Procedure Code, even though the defendant to the suit may not have been a party to that proceeding."

6. There can, we think, be no doubt that the limitation of three years applies to all persons bound by, or parties to, the order and to any persons claiming under or through any such persons, and that as far as that part of the judgment is concerned that is what was decided in the case above cited. Mr. Justice Pontifex in delivering the judgment of the Court said: "So far as the Magistrate's order is concerned the present plaintiffs were bound to respect the possession of the Roy defendants or those claiming under them, unless they instituted a suit within three years."

7. That is precisely the present case, as the Subordinate Judge finds that both the defendants claim the land under the same title; indeed that of the defendant No. 1 is derived through the defendant No. 2, as she was in possession of the whole estate of her husband as his executor at the time when she adopted the other defendant, and the present litigation is between persons, all of whom were bound by the order, as they were all either parties to it or derived their title to the property from or through some person, who was a party to it. It is true that the learned Judge in the case cited goes on to say: "That possession having been got rid of, and the defendants having obtained possession adversely to the Roy defendants, we do not think that Article 46 prevents the present plaintiffs from suing the present defendants in a regular suit for a declaration of title." But no such question arises in the present case, and we do not think we ought to express any opinion upon it. Our answer to the question referred is that the three years" limitation applies to all persons bound by, or parties to, the order,

and to any other persons who may claim the property through any such persons under a title derived subsequent to the order.

8. The appeal will be dismissed with costs.