
(1867) 02 CAL CK 0007
In the Calcutta High Court

Case No : Review No. 856 of 1864 in Regular Appeal No. 198 of 1864

Laknarain Singh and Others

APPELLANT

Vs

Mussamut Ranee Mankoer and Others

RESPONDENT

Date of Decision : 26-02-1867

Acts Referred:

Citation : (1867) 02 CAL CK 0007

Judgement

Sir Barnes Peacock, Kt., C.J.—If this were a suit merely to set aside a summary-decision as to the light of possession under Act XIX of 1841, we are of opinion that (if any such suit is maintainable) it should, under cl. 5, s. 1, Act XIV of 1859, be brought within one year. Here the plaintiffs do not simply raise the question whether the Judge's order under that Act was rightly-made, but seek to establish their own title, and to be put into possession as the heirs of Chaen Singh and Nepal Singh. Two cases have been referred to--Greedharee Doss v. Nund Kishore Dutt Mohunt 2 Hay's Rep., 633 and Mussamut Momeedunnissa v. Mahommed Ali 1 W.R., 40. The question is, does the summary order made under Act XIX of 1841, and intended only to affect the question of possession, operate as a bar to a regular suit to try the title? The recital of that Act is as follows:-- "Whereas much inconvenience has been experienced, where persons have died possessed of moveable and immoveable property, and the same has been taken under pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud, in order to obtain possession and whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party, removed from possession thereby, from instituting a regular suit:. . . and

whereas it will be very inconvenient to interfere with succession to estates by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit:" Then s. 1 says:-- "It is hereby enacted that, whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the District where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended." S. 3 says: "And it is hereby enacted that the Judge to whom such application shall be made, shall, in the first place, enquire by the solemn declaration of the complainant, and by witnesses and documents at his discretion whether there be strong reasons for believing that the party in possession, or taking forcible means for seizing possession has no lawful title, and that the applicant or the person on whose behalf he applies is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bona fide." Then s. 4 enacts: "And it is hereby enacted that, in case the Judge shall be satisfied of the existence of such strong ground of belief, but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession subject to regular suit (as hereinafter mentioned) and shall deliver possession accordingly." S. 18 says: "And it is hereby enacted that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession: but that for this purpose it shall be final, not subject to any appeal or order for review." S. 17 says: "And it is hereby provided that nothing in this Act contained shall be any impediment to the bringing of a regular suit, either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act." If the summary order made under this Act is to be no impediment to bringing a regular suit, there is no necessity for setting aside that order. Then the question is, within what time is the regular suit to be brought to try the title to land, and to be put into possession of it? The summary order cannot be pleaded or set up as a bar to the maintenance of the suit to try the title, and to be put into possession under that title. Cl. 12, s. 1, Act XIV of 1859, fixes the period of limitation in suits for the recovery of immoveable property, or of any interest in immoveable property, to which no other provision of that Act applies, at the period of twelve years from the time when the cause of action arose. We think, then, that the period of limitation in such a suit as this is twelve years, and not one year.

2. The case will be sent back to the Division Court which referred it to us with this expression of our opinion. We may add that we express no opinion as to the effect of summary orders, other than those under Act XIX of 1841.