

(1920) 11 AHC CK 0002
In the Allahabad High Court

Lala Ganpat Rai

APPELLANT

Vs

Musammat Husaini Begam and Others

RESPONDENT

Date of Decision : 18-11-1920

Acts Referred:

Citation : 60 Ind. Cas. 905

Hon'ble Judges : Walsh, J;Piggot, J

Bench : Division Bench

Judgement

1. The father of the plaintiff in this Base held a decree against one Mazhar Husain, in execution of which he brought to sale, as the property of his judgment debtor, one entire house, and himself purchased it at auction on the 25th of February 1805. On attempting to take possession he was resisted by Musammat Ishrat Begam, one of the sisters of Mazbar Husain, who claimed the entire house as her own property. He asked for the assistance of the Court, but after an investigation of his claim the Court refused to put him in possession. The present suit was instituted on the 26th of February 1917, apparently on the last possible, day of limitation, assuming that the plaintiff was entitled to bring his suit within twelve years of the date of the auction purchase. The plaint is wholly silent as to the attempt made to obtain possession through the Court in the year 1806. On the face of it, it is a suit upon title, claiming possession by purchase of a 2/5ths share in the house as the property of Mazhar Husain acquired by the plaintiff's father on the 25th of February 1905. There was a long list of defendants, including the heirs of Mazhar Husain and the heirs of his sisters. The suit was resisted by the latter and the main defence set up was one of limitation. This plea involved two distinct points. It was pleaded that Mnsammat Ishrat Began), whatever her title to the house in question, had been in proprietary and adverse possession of the same for a long period and had, in fact, perfected a good title by prescription as against Mazhar Husain, even before the date of the auction sale. Secondly, the plea taken was with reference to Article 11A of the First Schedule to the Indian Limitation Act, No. IX of 1908, the point being that the suit should have been brought within one year of the adverse decision of the

Execution Court which was dated the 21st of July 1906. The Courts below have dealt with this latter point only. Both Courts have held that the suit is barred under the Article above mentioned. We have before us a second appeal by the plaintiff. The real question is, whether the present suit is or is not one to establish the right to present possession of the property comprised in the order of the 21st of July 1906, claimed in that year by the plaintiff's father. The Court of first instance has relied upon a decision of the Bombay High Court, in the case of *Bhimappa v. Irappa* 26 B. 146 : 3 Bom. L.R. 694, in which a somewhat similar attempt by a plaintiff to get round the provisions of the Limitation Acts was defeated. The case is not entirely on all fours with the present. Indeed, it is obvious that each case of this sort will require to be judged with reference to its own facts. As put before us in argument, the plaintiff's case is that he is not really attacking the decision of July the 21st 1906, but is acquiescing in that decision, inasmuch as he admits that Mazhar Husain was, on the date of the auction sale, the owner of a 2/5ths share only in the house in question. He asks us to interpret the decision of the Execution Court as merely affirming the right of Musammat Ishrat Begam to same undivided there in the house. Hence, he claims that the provisions of Article IIA of the Schedule to the Limitation Act have no bearing on the facts of this case, and that he retained his right to sue upon the title acquired by his father on the date of the auction-purchase. A good deal necessarily depends on the interpretation put upon the Execution Court's order of July 21st 1906. On the whole, we think that the Courts below have proceeded upon a common sense view of the facts and that their decision is a sound one. In 1906 the plaintiff's father claimed the entire house on the strength of the title derived by him at an auction-sale, at which the house had been sold as the property of Mazhar Husain. He now says that he is prepared to admit that Mazhar Husain was the owner of a 2/5ths share only in the house and he asks the Court to separate that share by metes and bounds from the rest of the house and to give him possession over the same. On the principle that the greater includes the less, it seems reasonable to hold that the right now claimed to present possession over a portion of the house is included in the right claimed in the year 1906 to present possession over the entire house, so as to bring into operation the provisions of Article IIA of the Limitation Act Schedule. It must be remembered that the plaintiff's father had been met by a claim to the entire house on the part of Musammat Ishrat Begam and not merely to a portion of the same. It is not possible to say with certainty on what precise ground the Execution Court's decision of July 21st, 1906, is to be taken to have proceeded. The broad fact remains that the Court recorded its opinion that the auction-purchaser had failed to make out an adequate case in support of this claim and was not entitled to the assistance of the Court by way of delivery of possession u/s 315 of the former Code of Civil Procedure. The order very definitely refers the auction-purchaser to his remedy by way of a regular suit. On the face of the record, there seems something fishy about this claim, held up for such a long period of years after the adverse decision of July 1906 and finally preferred on what, according to the plaintiff himself, was the last possible day of limitation.

For these reasons, we think that the decision of the Courts below was correct and we dismiss this appeal with costs.