

(1889) 11 PRI CK 0013

In the Privy Council

Mohini Mohun Das and Others

APPELLANT

Vs

Bungsi Buddan Saha Das and others

RESPONDENT

Date of Decision : 19-11-1889

Acts Referred:

Citation : (1890) 17 ILRPC 580

Hon'ble Judges : Macnaghten, B. Peacock, R. Couch, JJ.

Judgement

Macnaghten, J. 1. These suits were instituted on the 2nd of November 1883 to recover moneys alleged to be due to Mohini Mohun, Gobind Rani, and Khetter Mohun jointly, on an account acknowledged and signed in 1880. In both Courts the suits were held to have been originally defective for want of parties, and to have been barred by the Law of Limitation before the defect was cured. 2. On the face of the complaints the three joint-creditors are named as co-plaintiffs. The names of Gobind Rani and Khetter Mohun have not been struck out, nor did they, or either of them, attempt to repudiate the suits. But still it was contended that Mohini Mohun was the sole plaintiff, or, at any rate, that Khetter Mohun ought not to be treated as a co-plaintiff from the commencement of the litigation. 3. In the first place it was said that the complaints were signed and verified by Mohini Mohun alone. But that is immaterial. There is no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the complaint. 4. Then as regards Khetter Mohun, it was said that both Mohini Mohun and Khetter Mohun himself took the view that he was not originally a plaintiff. Having named Khetter Mohun as co-plaintiff, Mohini Mohun presented petitions asking for permission to prosecute the suits on behalf of Khetter Mohun, relying, as appears by the complaints, on Section 30 of the Civil Procedure Code of 1882, which only applies "when a suit is brought by one person on behalf of other persons having joint interests, but not named as co-plaintiffs." Notice of the petitions was given to Khetter Mohun, and he being named as co-plaintiff already asked to be made a plaintiff. By some oversight orders to that effect were made on the 8th of January 1884. The orders were merely waste paper. These various experiments or blunders cannot, in their Lordships' opinion, affect the real

position of the parties, which is plain on the face of the record. The question, as Mr. Doyne put it, is simply this: When was it that Khetter Mohun became a party to these suits? If it was on the 2nd of November 1883, the suits were in time. If it was not till the 8th of January 1884, they were too late. Their Lordships think that Khetter Mohun, as well as Gobind Rani, became a party, as plaintiff, on the 2nd of November 1883, and that the suits therefore are not barred by lapse of time. 5. Their Lordships will humbly advise Her Majesty that the appeals ought to be allowed, that the decrees of the Subordinate Court and the High Court ought to be reversed, and that the suits should be remanded to the High Court with a direction that they should be tried on the merits by the Subordinate Court, and giving the parties leave to raise such issues and to adduce such evidence as they may be advised, and that the costs which have been incurred in the Subordinate Court should abide the results of the suits, and the costs which have been incurred in the High Court be paid by Bungsi Buddan Saha Das. The respondent, Bungsi Buddan Saha Das, will pay the costs of these appeals.