

(1874) 12 CAL CK 0004
In the Calcutta High Court
Case No : Regular Appeal No. 275 of 1873

Mrinmoyee Dabea

APPELLANT

Vs

Bhoobunmoyee Dabea and Another

RESPONDENT

Date of Decision : 07-12-1874

Acts Referred:

Citation : (1874) 12 CAL CK 0004

Judgement

Sir Richard Couch, Kt., C.J.—The first question to be determined is whether the suit is barred by the law of limitation. The Subordinate Judge who has decided against the plaintiff and dismissed the suit has in a manner decided this question, but he also gave his decision upon the other question, namely, whether the second defendant, Shibendro Narain, was lawfully adopted.

2. Horendro Narain died on the 16th of May 1854, and the alleged permission to adopt, the anumati-patra, is dated the 14th of May 1854. According to the evidence, Shibendro Narain was taken by Bhoobunmoyee to the family-house and treated as the person who was to be adopted by her, having been named in the anumati-patra, but the adoption was not completed until the 19th of May 1856.

3. If this case is governed by the law of limitation, it is by Act XIV of 1859. The words of cl. 16 of s. 1 of that Act are so general, that I can see no ground for saying that a declaratory suit such as this is, namely, to declare that there is no valid adoption does not come within it. They are:—"To all suits for which no other limitation is hereby expressly provided, the period of six years from the time the cause of action arose." The intention of the Legislature seems to be to provide a limitation for every suit. Having stated certain periods for different suits by the previous clauses and the last clause of the first section says that to all suits for which no other limitation is provided, the period is to be six years from the time when the cause of action arose. There are several cases in this Court in which it appears to have been considered that the law of limitation would apply to a declaratory suit, but I am not aware of any case in which it has been expressly

decided. In many cases it would be unnecessary to decide it, as the Court, in the exercise of the discretion which it has, would decline to make a declaratory decree even if a lesser time had elapsed before bringing the suit, unless there were special circumstances.

4. I think, therefore, that the 16th clause does apply to a suit of this description, and then the only exception to the time beginning to run from the date of the adoption, which is the cause of action in a suit to have it declared invalid, is that which is provided in s. 9, namely, the right of action being concealed by means of fraud. Here, there is no evidence that the adoption which was made by Bhoobunmoyee after the death of Romendro, who died on the 6th of July 1855, was in any way concealed from Mrinmoyee. The cause of action therefore arose then, and the period of limitation would then begin to run. There is no evidence that Mrinmoyee had before that made any adoption under the power which it is admitted she had from Romendro. The plaintiff Nogendro is a secondly adopted son. There was a previously adopted son who died namely, Debendro; but in the absence of any evidence of the time when his adoption was made, we cannot assume an affirmative in favor of the plaintiff, namely, that it was made before July 1856. So far as there is any evidence, it appears that it had not been made at that time. Therefore, on the 19th of May 1856, when the cause of action arose, Mrinmoyee was entitled to and in possession of the property of Romendro. Whether she was the person who, if Bhoobunmoyee died without making any valid adoption, would succeed to the share of Horendro need not be determined. There was no minor in existence who had the right so as to make the provision in the law of limitation in favor of minors applicable. Whether the right to bring such a suit as this, upon the adoption being set up by Bhoobunmoyee, was in her, or in some other person is not material. It is sufficient that it does not appear that the right was in a minor.

5. Therefore it appears to me that in this case the cause of action upon which the present suit is founded, it being merely a suit to declare the adoption invalid, arose on the 19th of May 1856. And this suit was brought much beyond six years and even beyond twelve years, if that period could be made applicable. I therefore think it is barred by the law of limitation. But, as the Subordinate Judge also decided the question whether a valid adoption was proved by the defendants, it is desirable that we should give our decision upon it.

6. The plaintiff impeaches the adoption upon two grounds: first, that Horendro Narain gave no permission to his wife to adopt a son; and, secondly, that the father of the boy who was adopted did not give to his wife Hurosoondery permission to give the boy in adoption.

[His Lordship then went through the evidence and found these two grounds in favor of the defendants and concluded]:--

Upon both grounds, first, that the suit for a declaration of the invalidity of the adoption is barred by the law of limitation; and, secondly, upon the facts I think

that the decision of the Court below is right, and that the appeal ought to be dismissed with costs.