

(1887) 07 PRI CK 0006

In the Privy Council

Rani Anundmoyi Debi and Bhupendra Narain Roy

APPELLANT

Vs

Girishchunder Maiti

RESPONDENT

Date of Decision : 15-07-1887

Acts Referred:

Citation : (1887) 14 IndApp 137

Hon'ble Judges : Hobhouse, Macnaghten, Barnes Peacock, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. The only question which has been decided in this suit is whether it is barred by the law of limitation. The Subordinate Judge before whom the case came in the first instance was of opinion that the claim was a claim for money lent, and by Article 57 of Act XV of 1877 a term of three years only was given for bringing the suit, and that time had expired before the suit was brought. 2. When the case came before the High Court the learned Judges there were of opinion that Section 10 of that Act applied on the ground that there was a valid trust for the payment of the money which was claimed in the suit. That section says: - "Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, shall be barred by any length of time." It does not clearly appear whether the learned Judges intended to deal with the other question, that it was a charge, and so came within the 132nd article of the second schedule of the Act, in which case a period of twelve years is given for bringing the suit. They appear to have rested their judgment upon its being a trust for the payment of the money. 3. Their Lordships consider that the case may be disposed of upon the question whether the money is charged upon immoveable property; and in order to see whether that is so or not, they have to look at the terms of the will. The will was made by Shib Pershad, and purports to be addressed to the present Appellant, who was the Defendant in the suit. It states that the father of the Appellant, Goluckchunder, had supplied the maker of it, Shib Pershad, with money to sue for the recovery of property of which he had been dispossessed by his cousin, Jai

Narain Giri, and that a suit had been carried on in the different Courts which had been successful, and that a decree had been obtained for the recovery of the property; and after stating that fact, and also that Goluckchunder had shewn great kindness to Shib Pershad, it contains these words: - "Therefore you being my nephew (sister's son), and competent to give the pind (funeral cake) to my ancestors, I give you under this will the whole of my moveable and immoveable properties specified in the decrees I have obtained in the original suit, No. 17 of the District Court, and the appeals Nos. 167 and 168 of the High Court, under these conditions, viz., that you will perform, and caused to be performed antim-kriya (cremation) and rites and ceremonies in the proper manner at a reasonable cost, and that you will cause the said kriya to be performed. The loan of Rs. 15,000 which I took from your father, the aforesaid Maitai, and by means of which I carried on the cases aforesaid from the Zillah Court up to the Sudder Court, in which I have been successful, you will repay with interest from the properties specified in the decrees, and so set me free from liability for that debt." Now if by that will a charge was created upon the property which had been recovered, and which was specified in the decrees, the case clearly came within the 132nd article; and their Lordships think there can be no doubt that there was such a charge. It is a charge upon specific property, namely, the property specified in the decrees. On that ground their Lordships are of opinion that the decision of the High Court ought to be affirmed, and the appeal dismissed, and they will therefore humbly advise Her Majesty accordingly. The Appellant will pay the costs of the appeal.