Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Rajah Enayet Hossein v. *Girdharee Lall; and same* v. *Sumeerchand and others, from the High Court of Judicature at Calcutta: delivered the 22nd February*, 1869.

Present:

Sir James William Colvile.
Lord Justice Selwyn.
Lord Justice Giffard.

Sir Lawrence Peel.

THIS is an Appeal from the decision of the High Court, which has reversed the decision of the Court below, and has in substance held that the Statute of Limitations does not apply to this case.

It appears that the property in question is claimed under a Deed of Gift, which applies to one-third of it, and under a Will, which applies to the remaining two-thirds. Very shortly after the death of the testator, which took place in the year 1841, and in consequence of disputes which had arisen in the family with respect to the validity of the Deed of Gift and the validity of the Will, proceedings were instituted, which resulted in a decree not of a final character, but which was made in the presence of all the parties on the 19th November, 1842, and under which the eldest son of the testator was put in possession of the property, in which he has remained ever since. It would thus appear to be beyond doubt that the Statute, at all events, commenced to run from the 19th November, 1842, and it is, therefore, incumbent upon those who have taken these proceedings, under plaint filed on the 18th February, 1859, to show some circumstances which would take the case out of the operation of the ordinary rule, much more than twelve years having elapsed between those two dates.

Now the claim which is filed is not, as has been argued at the bar, a claim founded upon the notion of the person under whom the claimant claims being a *cestui qui trust* of the eldest son, under a deed or will, but a claim under an intestacy distinctly alleging the Mahommedan law, and praying for the division of the estate of an intestate under that Mahommedan law, and a specific claim of the share to which the person under whom the Plaintiff claimed would have been entitled in the case of an intestacy.

In answer to that, the Statute of Limitations is set up. It appears, that the particular person under whom the claimant in the first of the appeals now before us derives his title, although he was an infant at the time when the suit of 1841 was instituted, and when the petition, which has been referred to was filed by him in support of the Deed of Gift and of the Will, became of age in the year 1842, and before the date of the Decree, and he must be taken to have had full cognizance of all the facts and matters which were in dispute at and after that time. Although a second suit was instituted by other members of the family in the year 1852, it does not appear that in the subsequent proceedings any new questions have been raised, or that any new facts have been elicited, or that any new discovery of any fraud has been made; and their Lordships are of opinion that there has not been in this case any such discovery of fraud as can be held to have postponed the operation of the Statute of Limitations.

There is another point which appears to have been taken by the learned Judges of the High Court, and which seems to have been founded on the supposition that there was some distinction to be made in favour of a person claiming under an execution sale, as contradistinguished from the representatives of any person claiming under an ordinary assignment or conveyance.

In the opinion of their Lordships, there is no foundation in principle or authority for any such distinction; but the person who comes here as the Plaintiff, and who is the Respondent in this case, must stand in the same position as Bahadoor would have stood, if he had been the claimant, and as the daughter would have stood in respect to the other

share, if she had been the claimant. With respect to both of them: the daughter was of age at the time of the proceedings in 1842; the son, Bahadoor, became of age in 1842; and they have had full notice of all the facts. Their Lordships have already said that there has been no subsequent discovery of any fraud, nor indeed, as far as appears, any new matter whatever brought in issue between these parties, beyond that which was raised in the proceedings in 1841 and 1842. The learned Counsel who argued the case on the part of the Respondent has been unable to produce any authority in support of any such distinction as has been supposed to exist between a person standing in the position of a claimant under an execution sale, and a claimant under any other conveyance or assignment.

It appears, therefore, to their Lordships that in this case the time must be taken to have begun to run, at all events from the date of the Decree, on the 19th of November, 1842, and that there is *nothing whatever to bring this case within any of* the exceptions to the Statute of Limitations; and, consequently, that the decisions of the Zillah Court were right, and that the High Court ought to have dismissed the Appeal from that decision with costs.

It is admitted that the second appeal now before their Lordships raises precisely the same questions as the first.

The Order, therefore, which their Lordships will humbly recommend Her Majesty to make, will be to reverse the decision of the High Court, and to declare that that Court ought to have dismissed the Appeals before them with costs. We think that the costs of both these Appeals should follow the event.

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