

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hurri Nath Chatterji v. Mothoor Mohun Chatterji, from the High Court of Judicature at Fort William in Bengal; delivered 17th June 1893.

Present :

LORD WATSON.

SIR RICHARD COUCH.

HON. GEORGE DENMAN.

[*Delivered by Sir Richard Couch.*]

The question in this appeal is whether the suit is barred by the law of limitation. It was brought to recover a two-thirds share of immoveable and moveable properties formerly in the possession of Ramanundun Goswami (Mookerji), to which he was said to be entitled, as to one part as marfatdar or shebait, and as to the other as malik. He died in 1847, leaving a widow, Pearimoni, his second wife, and five daughters, one having died in his lifetime. The eldest daughter, Drobomoni, died in 1867, leaving a son, Kala Chand, who died in the following year, leaving a son, Girish Chunder, who is the third Defendant. The second daughter, Hurromoni, died in 1874, leaving a son, Mothoor Mohun, the first Defendant. The third of the survivors, Motimoni, died in 1857 leaving a son, Thakoordas, the second Defendant. The fourth died childless, and the last survivor, Sampurna, died on the 22nd February 1884, leaving a son, Hurri Nath, who is the Plaintiff. The plaint stated that, after the death of Hurromoni,

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Sampurna, who was then the only survivor of the daughters, placed the whole of the estate under the management of Mothoor Mohun, who some time after brought suits for rent against tenants, and, with a view of effecting registration in his own name under Act VII. of 1876 (Bengal Council), made petitions; that thereupon Sampurna became an objector, and, the objections having been disallowed, she in 1879 brought a suit against Mothoor Mohun *in formâ pauperis*, which was dismissed on the 27th June 1881; that she preferred an appeal *in formâ pauperis* to the High Court, but the appeal not having been preferred within the prescribed time her application to prefer it *in formâ pauperis* was rejected, with liberty to prefer an appeal within six weeks on putting in the Court fee; that she was unable to do this, and consequently the dismissal of her suit became final. The plaint further stated that Thakoordas, on a native date corresponding with the 17th August 1875, made to the Plaintiff a gift of his share of one-third of the estate left by Ramanundun, making the Plaintiff entitled to two-thirds as claimed. Mothoor Mohun in his written statement said that Sampurna, after the death of Pearimoni, instituted a suit for possession of all the properties under claim against him; that her claim was dismissed on the ground of limitation, it having been established that, after the death of Pearimoni, Sampurna was never in possession of the shebas and the other properties relating thereto left by Ramanundun.

The Subordinate Judge made a decree for possession by the Plaintiff of the immoveable properties claimed in the plaint with the exception of some specified lands, and the Plaintiff has not appealed against this exception. The Defendant Mothoor Mohun appealed to the High Court. In the judgment of that Court it is said

that " the defence, so far as it need be referred to, " is that the claim is barred by limitation, as " none of Ramanundun's daughters inherited or " were in possession; that the plaintiff is bound " by the adverse decree passed against Sampurna " in the suit which she brought against defendant " No. 1, and that he cannot bring another suit." This defence was distinctly asserted in the written statement, and no objection appears to have been taken that it was not raised by the issues which were settled. The judgment of dismissal of the 27th June 1881, although it had been filed with the plaint, was not put in evidence, and cannot be looked at; but the High Court had before it the statement in the plaint which admitted that there had been that judgment, and Mothoor Mohun said in his written statement that it was on the ground of limitation. There was thus sufficient evidence for the High Court to found its judgment upon.

It will be convenient here to notice the state of the law of limitation when the suit was brought in 1887. Prior to the Limitation Act of 1871 the law under Act XIV. of 1859 was that suits for the recovery of immoveable property must be brought within twelve years from the time the cause of action arose. By the Limitation Act of 1871 the whole of the Act of 1859 which applied to the limitation of suits was repealed; and by the fourth section it was enacted that, subject to the provisions contained in certain sections, every suit instituted after the period of limitation prescribed therefor by the second schedule to the Act should be dismissed, although limitation had not been set up as a defence. Art. 142 in the second schedule is as follows:—

" Like suit (that is for possession of immoveable property)
 " by a Hindú entitled to the possession of immoveable property
 " on the death of a Hindú widow. Period of limitation—
 " twelve years. Time when period begins to run—when the
 " widow dies."

In 1877 this Act was repealed and the Limitation Act of 1877 was passed. In that Act the same period of limitation was by Art. 141 prescribed to a suit by a Hindu or Muhammedan entitled to the possession on the death of a Hindu or Muhammedan female.

In the judgment of this Committee in the *Shivagunga* case (9 Moore I. A. 539) it is said (p. 604), with reference to an adverse decree in a suit brought by a Hindu widow for possession of a zemindary as heir to her husband, that if it had become final in her lifetime it would have bound those claiming the zemindary in succession to her; and unless it could be shown that there had not been a fair trial of the right in that suit, or in other words unless that decree could have been successfully impeached on some special ground, it would have been an effectual bar to any new suit by any person claiming in succession to the widow. The judgment in *Nobin Chunder Chuckerbutty v. Guru Pershad Das*, quoted by the High Court, is not directly applicable to the present case. It is referred to in the judgment of this Committee in *Aumirtolall Bose v. Rajoneekant Mitter* (L.R. 2 I. A. 121), where it is said that the rule there laid down had been acted upon in other cases, and it appeared to their Lordships that the principle of that decision is correct. In the latter case the suit was brought on the 8th September 1858 and the question of limitation had to be determined according to the old law.

The estate to which Sampurna as the survivor of the daughters succeeded was similar to the estate of a widow, and the principle of these decisions applies equally to it. This being the law when the Act of 1871 was passed, the contention of the learned Counsel for the Appellant was that the effect of Art. 142 in the schedule to that Act and of Art. 141 in the schedule to the Act of 1877 is that a decree founded upon the law of limitation is

now excepted from the rule laid down in the *Shivagunga* case and that therefore the decree of 1881 only bound Sampurna, and the Plaintiff had by the terms of Art. 141 a period of 12 years from her death to bring his suit. Their Lordships see no ground for this contention. The words "Entitled to the possession of immoveable property" refer to the then existing law. Under that law the Plaintiff being bound by the decree against Sampurna would not be entitled to bring a suit for possession. The intention of the law of limitation is, not to give a right where there is not one, but to interpose a bar after a certain period to a suit to enforce an existing right. The purpose of the second schedule in each of the Acts is only to prescribe the period of limitation for the suit. That appears from the 4th section of each Act. The prescribed periods are to be applied to suits founded on the existing law, and Art. 141 cannot be construed as altering the law respecting the effect of a decree. Their Lordships approve of the judgment of the High Court where it says "we think therefore that on the authorities cited the plaintiff is bound by the decree in the previous suit, and that he cannot maintain this suit, either as regards his own one-third share or as regards the share acquired from Thakoordas, who is equally bound by that decree." They will therefore humbly advise Her Majesty to affirm the decree of the High Court and to dismiss the appeal.

The Appellant will pay the costs of this appeal, except the Respondent's costs of the application to be allowed to lodge a certified copy of the judgment of the 27th June 1881 in the Privy Council Office. The Respondent will pay the Appellant's costs of that application.
