
(1886) 08 AHC CK 0007

Allahabad High Court

Case No: None

Gopal

APPELLANT

Vs

Basdeo

RESPONDENT

Date of Decision: Aug. 6, 1886

Citation: (1886) ILR (All) 644

Hon'ble Judges: Tyrrell, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield and Tyreell, JJ.

The plaintiff claims certain Immovable property by right of succession to one Bhagirath, on the death of the latter's widow, Musammat Rajo. The defendant Basdeo attached the property as " belonging to his judgment-debtor, Chatarbhuji, defendant, and the plaintiff's objection was disallowed by the Court executing the decree, u/s 281 of the Civil Procedure Code. The plaintiff has brought his suit to set aside the order, remove the attachment, and obtain possession. The defendant set up a title based on the adoption of Chatarbhuji by Musammat Rajo.

2. The question before us is whether the suit is barred by limitation.

3. The suit has been brought within one year of the order of the Court u/s 281 of the Civil Procedure Code, and is not barred with reference to Article 11 of the Limitation Act, but the Court of First Instance held that it was barred by Article 118, treating it as a suit to obtain a declaration that an alleged adoption is invalid or never took place. The Lower Appellate Court, on the other hand, held that it was a suit for possession of Immovable property, governed by Article 141, and was within time.

4. We are of opinion that the Subordinate Judge is right. The suit is not to obtain any declaration that the alleged adoption set up is invalid, but it is for recovery of possession of Immovable property, for which there is a special limitation. Article 118 only applies to

suits where the relief sought is of a purely declaratory nature; it is discretionary in a Court to grant this sort of relief, and the suit for a declaration is distinct from a suit for possession of property, and it is instituted on a stamp of much smaller value, and the suit for possession of property cannot be held to be barred as a suit brought under Article 118, merely by reason of its raising a question of the validity of an adoption.

5. The Privy Council decision in *Jagadamba Chowdhry v. Dakhina Mohun* decided 9th April 1886 has no application. That decision dealt with the limitation in Article 129 of the old Act IX of 1871, which referred to suits to set aside an adoption, and their Lordships held that the terms "to set aside an adoption" referred to and included suits which bring the validity of an adoption into question, and applied indiscriminately to suits to have an adoption declared invalid and for possession of land, when the validity of an alleged adoption is brought into question.

6. But that decision had peculiar reference to the terms in which Article 129 was framed. The present law of limitation has made an alteration. It contains no such Article as 129. On the other hand, we have Articles 118 and 119, the former for suits to obtain a declaration that an alleged adoption is invalid or never took place, and the latter to obtain a declaration that an adoption is valid; and the period of limitation is reduced to six years, and the time from which it will run is altered, and the Act provides separately for suits for possession of property by Article 141.

7. There is no ambiguity about Article 118 as there was about Article 129 of the old law, and it can be held only to refer to suits purely for a declaration that an alleged adoption is invalid or never, in fact, took place; and where the suit is for possession of property, to which another limitation law is applicable, it will be governed by it, although the question of validity of adoption may arise. As already observed, it is discretionary in a Court to grant relief by declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former.

8. It is observable that, in the case we have referred to, their Lordships of the Privy Council remarked upon the difference between the language of Article 129 of Act IX of 1871, which they designate as being of a loose kind, and the precise terms of Articles 118 and 119 of Act XV of 1877, which we have described above. We dismiss the appeal with costs.