

(1911) 05 CAL CK 0002

Calcutta High Court

Case No: Appeal from Appellate Decree No. 2951 of 1905

Choudhry Kirtibash Das and
others

APPELLANT

Vs

Umesh Chandra Dutt and others

RESPONDENT

Date of Decision: May 9, 1911

Final Decision: Dismissed

Judgement

1. This was a suit brought by the Plaintiffs as shebait of a certain Deity for the declaration of title to and recovery of possession of 8 as of a certain property of which the Defendants Nos. 17-24 were the co-sharers of the Plaintiffs, the other Defendants being the auction-purchasers of 16 annas of the property under a decree on a mortgage made by the said co-sharer Defendants. The Plaintiffs made the Common Manager of the estate of the auction-purchaser Defendants a party Defendant and also the auction-purchasers or rather those they supposed to be the auction-purchasers. The suit was brought about two days before the expiry of 12 years from the dispossession and at that time some of the auction-purchaser Defendants were dead and their heirs were brought on the record after the expiry of 12 years. It is contended by the Defendants who have appeared through their Common Manager that the suit is barred by limitation under the provisions of sec. 22 of the Limitation Act. Under sec. 98, cl. 3 of the Bengal Tenancy Act, the Common Manager has for the purposes of management the same powers as the co-owners might have exercised but for his appointment and the co-owners are debarred from exercising such powers. It has been held in the case of *Sibo Sundari Ghose v. Raj Mohun Guho* (1903) 8 C.W.N. 214 that the Common Manager can bring a suit for declaration of title and recovery of possession of immoveable property on behalf of the co-owners, and if he can bring a suit, there is no reason why he should not represent them for defending a suit. As he was the party actually in possession to the exclusion of the co-owners, the suit against him was rightly brought and as that was done within time it was immaterial whether the heirs of some of the co-owners were brought on the record too late for a suit against them. The question of

limitation under sec. 22 does not therefore arise. The appeal is dismissed with costs.