(1868) 04 CAL CK 0001

Calcutta High Court

Case No: Regular Appeal No. 260 of 1867

Musst. Kalsumnissa alias Bibi Budhan		APPELLANT
	Vs	
Musst. Wahidunnissa		RESPONDENT

Date of Decision: April 16, 1868

Final Decision: Dismissed

Judgement

L.S. Jackson, J.

We think that the appellant in this case must fail. Her suit was to recover sicca rupees 7,503-12 annas--or Co''s. rupees 8.004-4-4, the balance of the dower-money (out of sicca rupees 40,000, and one gold mohur, the amount of dower due from plaintiff''s husband, Mir Sadut Ali) recoverable on the dissolution of marriage, from one-fourth of sixteen annas of the estate of the deceased Mahomed Mehdi, a lunatic, held by his widow Mussamut Wahidunnissa, after deduction of the proportionate amount of dower due by plaintiff as wife, and of the proportionate amount due by the said deceased Mahomed Mehdi''s uterine sisters Mussamut Hosseni Begum and Fatima Begum, who have, in lieu of the proportionate amount due by them surrendered to plaintiffs'' possession a part which they apportioned her of the estate of the deceased Mir Sadut Ali. It appears that the plaintiff''s husband died on the 30th of March 1845. The suit was commenced on the 26th of January 1867, nearly 22 years afterwards. The defendants pleaded, among other things, that the suit was barred by limitation. The Principal Sudder Ameen has held that the suit is so barred. The plaintiff appeals; and the defendant has also urged objections to the decision u/s 348. But the first question which it is necessary to consider is, whether the suit is barred by limitation or not.

2. Mr. Gregory, for the appellant, stated to us, as his contention, that limitation did not apply to the present case because the plaintiff had been in possession of her husband''s estate in lieu of dower, and continued down to 1866 in possession of a certain portion of the estate under a compromise with some of the heirs. His contention therefore was, that the cause of action arose in 1866, on his client being

removed from possession of the share of the estate which she had held down to that time.

3. It seems to us that this view of the case is untenable. Without going at unnecessary length into the facts of the case, it may be stated that the present plaintiff was, from one cause or another, in possession of the property left by her deceased husband. That husband, at his death, left a widow the present plaintiff, and one sister who appears to have died shortly after him, and a nephew, Mahomed Mehdi who at some time or other, it does not appear when, became a lunatic. The defendant before us is the widow of that nephew.

4. After the present plaintiff had remained for some time in possession of her husband''s estate, his nephew''s wife, the now defendant, sued her to recover that nephew''s share of the estate, he being then as above stated a lunatic, and obtained a decree on the 27th of May 1859; that decree was confirmed on the 28th of January 1861. Pending the appeal, the nephew Mahomed Mehdi had died, and he was represented, it seems after his death, not by his widow, the now defendant, but by his two sisters as heirs, and the final decision, on appeal, was therefore passed in the presence of them and of the plaintiff. But it appears clear that the nephew''s widow, Wahidunissa would be bound by that decree, and consequently it may be properly used as evidence in the present suit. We must therefore take it that in the previous suit, in which the present plaintiff was defendant, and a party whom the present defendant now represents was plaintiff, it was decided that the now plaintiff was not entitled to, and was wrongfully in possession of, her deceased husband''s estate, and was adjudged to restore the same, together with mesne profits; and there was in that case no reservation of her right to sue for dower. We mention this circumstance because it seems to constitute a distinction between the present case, and a case of Musst. Janee Khanum v. Musst. Amatool Fatima Khanum 8 W.R. 51 in the same manner as it constituted a distinction between that case and a later case (the ruling in which has our concurrence) Musst. Wafeah v. Musst. Saheeba 8 W.R. 307. It seams to us that the effect of the judgment in the previous suit was to throw the present plaintiff back on her original right of dower, and her cause of action by reason of the non-payment of dower, which accrued on the death of her husband. It seems to us also that the plaint in this case discloses that very cause of action, and no other. It cannot be said, we think, nor was it said in the case of Musst. Janee Khanum v. Musst. Amatool Fatima Khanum 8 W.R. 51 that this is a suit to give effect to the lien of the plaintiff on the share of the defendant, because the question of her right to a lien, and to hold possession of the share of the defendant has been expressly decided against her in the previous suit. Neither is it a suit arising out of any right of the plaintiff to hold possession of the property by virtue of any contract or agreement, or compromise between her and the heir of the husband; because no such contract or agreement exists; and the alleged compromise between the plaintiff and the nephew''s sisters was not binding on the other heirs and has also been set aside. It seems to us therefore that the cause of action arose in 1845 and

that there is nothing to take this case out of the operation of Act XIV of 1859; and therefore the Principal Sudder Ameen has rightly held that the suit is barred. We dismiss the appeal with costs and interest.