
(1881) 04 CAL CK 0004

Calcutta High Court

Case No: None

Attermoney Dossee

APPELLANT

Vs

Hurry Doss Dutt

RESPONDENT

Date of Decision: April 13, 1881

Acts Referred:

- Limitation Act, 1963 - Article 122

Citation: (1881) ILR (Cal) 74

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

This case raises a question which, so far as I know, has not been before decided. I do not think the question is one of any great difficulty; but as the suit is undefended, and I therefore had not the advantage of hearing the matter argued from the defendant's point of view, I thought it right to take time to consider.

2. I think the suit is well brought. It may be regarded in either of two ways It may be looked at as a suit upon the former decree. As a general rule a suit lies upon the decree of a Court of competent jurisdiction, unless the right to sue be taken away expressly or by implication. I see nothing to prevent a suit being brought upon a decree of this Court. And the Limitation Act prescribes the period of limitation for such a suit in Schedule ii, Division i, Article 122.

3. This suit may again be regarded as a suit supplemental to the former suit, and to revive the decree. And so regarded, I think, the suit is properly brought. Under the older procedure in the Supreme Court, a common law judgment was revived by scire facias, a proceeding which was of the nature of a new action to give effect to the old. An equity suit was revived by bill of revivor.

4. Act VI of 1854, Section 31, introduced a simpler method of reviving a suit on the Equity Side of the Court, by order in the suit founded upon a suggestion without the necessity of a Bill. But I can see nothing in that enactment to take away the right to proceed by bill, if for any reason the simpler mode of proceeding was not available.

5. The High Court inherited all the jurisdiction and powers of the Supreme[^] Court.

6. The provisions of Act VIII of 1859 were, by rule, made generally applicable to this Court; and that Act contained provisions for reviving suits by a summary process. The present Procedure Code, which, for the most part, applies, by its own authority to this Court, contains provisions of a like nature. But in these Acts again I find nothing to take away the right to proceed by the Older and more cumbrous methods, if for any reason the parties to a suit are unable to take advantage of the newer and simpler procedure.

7. In my opinion, therefore, the plaintiff is entitled to maintain this suit, and should have a decree in the terms of the first and second prayers of the plaint, the defendant having six months' time to redeem. The defendant, however, is not to blame for the necessity having arisen for recourse to a suit. That was in consequence of differences between the parties interested in Gostobehary Mullick's estate. The decree will, therefore, be without costs up to decree.

8. Attorneys for the Plaintiff: Swinhoe & Co.