
(1869) 06 CAL CK 0017

Calcutta High Court

Case No: Special Appeal No. 179 of 1869

Mohabat Ali and Ramat
Ali

APPELLANT

Vs

Ali Mahmud Kulal

RESPONDENT

Date of Decision: June 1, 1869

Judgement

Bayley, J.

We think this special appeal should be dismissed with costs. The plaintiff sued to establish his right derived from his father as the original purchaser of the property. The defendant claimed through one Shahmat Ali, who, he alleged, was a co-proprietor of the lands, and also pleaded limitation. The first Court gave the plaintiff a decree, holding that the defendant's kabala was false, and that his possession was not proved. The lower appellate Court has clearly found as a fact, on the evidence that from five years before the plaintiff's father's death, in 1213, that is from the year 1209, the possession was with the defendant and those through whom he claimed, and that this was shown by several acts of ownership, such as the receipts of rent and the direct evidence in the case; and further that the title under which the defendant claimed, that is the kabala, was a good and a valid title.

2. In special appeal it is urged that the law of limitation has not been properly applied in this case, and that whereas the first Court has given several reasons for its decision, the lower appellate Court has not given sufficient reasons to meet those of the first Court. Now the law of limitation that is applicable to this case is section 11, Act XIV of 1859, and that section says: "If at the time when the right to bring an action first accrues, the person to whom the right accrues is under a legal disability, the action may be brought by such person or his representative within the same time after the disability shall have ceased as would otherwise have been allowed from the time when the cause of action accrued, unless such time shall exceed the period of three years, in which case the suit shall be commenced within three years from the time when the disability ceased; but if at the time when the cause of action accrues to any person, he is not under a legal disability, no time shall be allowed on account of any subsequent disability of such person or of the legal

disability of any person claiming through him." Here it is quite clear that the cause of action arose to the plaintiff from the cessation of possession on the part of his father from whom he derived his title and as it has been clearly found as a fact that from more than 20 years before suit, i.e., five years before the plaintiff's father's death, neither the plaintiff nor his father had been in possession, the cause of action actually accrued to the plaintiff under the provisions of section 11 so as to bar the suit. The appeal is therefore dismissed with costs.