

(1868) 12 CAL CK 0008

Calcutta High Court

Case No: Special Appeal No. 1531 of 1868

Dinabandhu Das Gajendra
Mahapatra

APPELLANT

Vs

Jagabandhu Das Gajendra
Mahapatra

RESPONDENT

Date of Decision: Dec. 19, 1868

Judgement

E. Jackson, J.

We think that the plaintiff in this case has not proved that possession which it was necessary for him to prove, in order to save his suit from the plea of limitation which was urged in bar. The plaintiff admitted that he and the defendants had been formerly joint, but that a separation took place so far back as 11 years, 11 months and 22 days, and that this property, in the course of that separation, had been taken possession of by the defendant, and the plaintiff from that date to this had never had any possession of it. The plaintiff gives no explanation as to the cause of this extraordinary circumstance, but alleges that this property was a portion of the ancestral property, and that he is entitled to his share of it. The case was remanded to the Judge, in order that he should inquire very carefully into the question of this possession, but the Judge was of opinion that slight evidence, if credible, was sufficient, considering the difficulties under which the plaintiff must, under the circumstances, be in proving his case. Whatever may be these difficulties, it is evidently the plaintiff himself who has by long delay and sleeping over his case, allowed such difficulties to intervene in the proof of his suit.

2. On special appeal it is urged before us, that the evidence upon which the Judge has decided that the plaintiff has proved his possession, is only general evidence to the fact that before the separation in 1261 (1854) the brothers were in joint possession. It is not specific evidence; it does not allude to any specific acts of ownership; in fact, it in no way really proves that within 12 years of the date of suit the plaintiff had any possession in this particular property. After hearing the pleaders for both sides, we are of opinion that this contention is good, and that the

evidence is altogether insufficient. It may be that it is almost impossible to produce evidence on that point now, but for this the plaintiff has only himself to blame; he certainly has not produced Sufficient evidence, and his case must be dismissed on the point of limitation. We, therefore, reverse the decision of the Judge, and decree this appeal with costs.