
(1872) 01 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 988 of 1871

Baboo Bhagwan Sing
and Others

APPELLANT

Vs

Mitarjit Sing and Others

RESPONDENT

Date of Decision: Jan. 30, 1872

Judgement

Markby, J.

No doubt, the objection of the respondents was taken in the first Court, and in all probability it was only not taken in the second Court, because there the suit was dismissed on another ground. But as the suit seems to have been wrongly dismissed, it now becomes necessary to consider this point. Now, though the plaint in this case is not drawn with anything like technical accuracy, there really was a contest in this family as to the share of Chatro, which contest has been and ought to be made the subject of a suit and of decision in a Court of law. There was a contention on one side that the share wholly vested in the plaintiff, and a contention on the other that a moiety thereof vested in the defendants. It does not appear to me that there is anything in section 15, Act VIII of 1859, which prevents the Court entertaining a suit to ascertain how the shares of a deceased person are vested, notwithstanding that no overt act which could give rise to relief in the shape of damages, or a decree for possession, has occurred. It must be remembered that the words of section 15 are not, as the expression is, "disabling," but "enabling." They do not say that no suit shall lie in which a merely declaratory order or decree is sought, but that "no suit shall be open to objection on the ground that a merely declaratory order or decree is sought thereby;" and I do not think it was the intention of the Legislature to exclude any suits which, by the practice of the Courts at the time this Act was drawn, had been usually entertained. And as far as I can see, suits such as I consider the present in substance to be, viz., a suit to ascertain the shares of the several members of a family in a family property, where there is a dispute between them as to their respective rights, have been frequently entertained by this Court. Upon this ground therefore, that there was a real dispute between the parties as to their right to Chatro's share, which dispute the parties were desirous of having settled, and that though no one

had yet been disturbed in his possession, the defendants were asserting and acting upon their rights, I think this suit can be maintained.