

(1868) 07 CAL CK 0008

Calcutta High Court

Case No: Special Appeal No. 336 of 1868

Jagannath Pal

APPELLANT

Vs

Bidyanand

RESPONDENT

Date of Decision: July 16, 1868

Judgement

L.S. Jackson, C.J.

The plaintiff in this case was a co-sharer in certain joint immoveable property. It seems that some years previous to the institution of the suit, the time being variously stated as from 10 or 11 to 13 or 14 years, the plaintiff became a Bairagi, and, as he says, "relinquished the world" or "Sanshar," set out on a pilgrimage to various places sacred among the Hindus. He alleges, that before his departure he made over his share of the family property to the care of his nephew, Bidyanand, otherwise called Thakurdhan, stipulating only that, in the event of his return, the property was to revert to him.

2. During his absence, Bidyanand seems to have sold the property to one Fyzulla, since deceased, who was the husband of the defendant, Sabak Bibi, now in possession.

3. The plaintiff, therefore, sues to recover possession of such property, which is withheld from him by the defendant. The Munsif before whom the case first came, held that the plaintiff's allegation being found to be true, he was entitled to regain possession of his property, notwithstanding that he had become a Bairagi.

4. The Judge, on appeal, held, on the contrary, that the plaintiff having become a professed Bairagi was thereby civilly dead, and that his nephew, as heir, thereupon entered on immediate possession of the property; and, consequently, the defendant's vendor had a complete title, and the plaintiff's suit must be dismissed.

5. The defendant, it should be mentioned, had also set up the plea of limitation, contending that the plaintiff having been out of possession, without any trust, for more than 12 years, his suit was barred, but the Judge considered that limitation did

not apply. The plaintiff now appeals specially, and urges that the Judge's view of Hindu Law is incorrect.

6. It appears to us indisputable that a Hindu becoming a Bairagi, if he chooses to retain possession of, or to assert his right to, property to which he is entitled, does an act which may be morally wrong, but in which he will not be restrained by the Courts. If, therefore, it were clear that the plaintiff on quitting his home had made over his share of the property in trust to his nephew, and that that nephew, in violation of such trust, had sold that property to the defendant, we should have no hesitation in reversing the decision of the Judge, and ordering possession of the property to be given to the plaintiff. But before we can do this, the question of limitation must first be disposed of.

7. The defendant denies that any trust existed in respect of this property, and she alleges that at the time, and in consequence of the plaintiff becoming a Bairagi, the nephew did, in fact, as of right, take possession, and hold adversely to the plaintiff, and subsequently sold the property to her husband, and that such adverse holding has continued for more than 12 years. The plaintiff's evidence is to the contrary, but the Judge has not found distinctly on this point. It is, therefore, necessary to remand the case to the Lower Appellate Court, in order that it may be found whether, as alleged by the plaintiff, the defendant's vendor held this property in trust for the plaintiff, or, as alleged by the defendant, adverse possession had continued for more than 12 years. In the latter event the suit must be dismissed; if otherwise, the plaintiff is entitled to a decree.

¹ [Sec. 5:--In suits for the recovery from the purchaser or any person claiming under him of any property purchased bona fide and for valuable consideration from a trustee, depositary, pawnee or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase. Provided that in the case of purchase from a depositary, pawnee, or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15, Section 1.]

Computation of period of limitation in suits to recover property purchased from depositaries, pawnees, or mortgagees.

Proviso.