
(1873) 06 CAL CK 0003

Calcutta High Court

Case No: None

Toolseemoney Dossee

APPELLANT

Vs

Maria Margery
Cornelius and Others

RESPONDENT

Date of Decision: June 17, 1873

Judgement

Macpherson, J.

I think there can be no doubt whatever on the facts proved and admitted by Mrs. Cornelius that her husband became absolutely entitled to receive the rents and profits of the property during the joint lives of himself and his wife. It is contended on behalf of Mrs. Cornelius that her husband, John Cornelius, took no interest in that portion of the property which went to the Crown which could be attached and sold at a sheriff's sale. It is argued that the Crown has still a claim to two-thirds, and that Mrs. and Mr. Cornelius are merely tenants-at-will as regards these two-thirds, and that a tenancy at will is not assignable, and therefore could not be attached and sold by the sheriff. But it seems to me that the position of Mrs. Cornelius with respect to the two-thirds is not that of a tenant-at-will. She has a good title as to these two-thirds against the Crown; because, even if on the naked question of limitation the Crown would not be barred, it would practically now be estopped, by the line adopted by the Commissioners of the Treasury in 1841, from asserting its claim to these two-thirds. I do not think the Crown could now possibly be heard to claim these two-thirds and in my opinion, Mrs. Cornelius has a good title to the whole property even as against the Crown, and the rights of Mrs. Cornelius extend over the two-thirds as well as the one-third, and are rights which could be seized in execution and sold. It was further contended on behalf of Mrs. Cornelius that, if the plaintiff succeeds to any extent, some settlement should be made on her. I think she certainly is entitled to a settlement. It is in evidence that her husband is much involved, and lives at Chandernagore in great difficulties; and he has no property, subsisting only on a pension of Rs. 118 per month from Government, which pension will die with him. Although the plaintiff is declared entitled to an interest in the whole property for the life of John Cornelius, it is subject to a reference as to what will be a proper settlement to make on

Mrs. Cornelius and her children. The plaintiff is entitled to an account from the filing of the plaint, but not anterior to it. The plaintiff's interest being a life-interest, the proper course will be to appoint a receiver of the property for the life of John Cornelius. I order that the Court Receiver be appointed receiver for the life of John Cornelius.