

(1879) 07 CAL CK 0002

Calcutta High Court

Case No: None

Nund Lall Bose and
Another

APPELLANT

Vs

Meer Aboo Mahomed
and Others

RESPONDENT

Date of Decision: July 14, 1879

Acts Referred:

- Limitation Act, 1963 - Article 118

Citation: (1880) ILR (Cal) 597

Hon'ble Judges: Tottenham, J; Mitter, J

Bench: Division Bench

Judgement

Mitter, J.

It appears to us that in this case the decisions of the lower Courts are erroneous, and must be set aside, and that the plaintiffs are entitled to a decree for the amount claimed.

2. The plaintiffs are the heirs of one Russick Lall Mitter. When the estate left by him was in the possession of his widow, Moti Sunduri, certain mouzas appertaining to that estate were given in mokurari by her to the defendants in this case. A portion of these mouzas having been taken by Government for public purposes, a certain amount of compensation-money was in deposit in the Collector's Court in lieu of the lands thus taken. On Moti Sunduri's death, a suit was brought on the 7th October, 1871, by the plaintiffs against the defendants for the reversal of the mokurari potta and for possession of the lands covered by that potta. The lands which were taken by Government, the compensation-money of which was in deposit, appear to have been included in that suit, the plaintiffs being ignorant of the fact that those lands had been taken by Government for public purposes. That suit was decreed on the 30th June, 1873 in favour of the plaintiffs. In the meantime, that is to say, some time in March 1872, the whole amount of the compensation-money which was in deposit

in the Collector's Court, was taken by the defendants in this case. The present suit was brought on the 13th September 1875, by the plaintiffs to recover from the defendants that amount with interest from the date on which it was taken out of the Collector's hands.

3. The defendants resisted the claim, principally upon the ground that the plaintiffs' claim was barred by limitation, and that the suit was liable to be dismissed u/s 7 of Act VIII of 1859. Although, in the 7th paragraph of the written statement, the defendants stated that they were entitled to this money, it appears to us quite clear that the effect of the final decision of the 30th June 1873, between the parties, was to declare that the plaintiffs' title in respect of this money was superior to that of the defendants.

4. The Subordinate Judge dismissed the plaintiffs' claim u/s 7 of Act VIII of 1859. On appeal by the plaintiffs, the District Judge overruled that objection. He was also of opinion that the plaintiffs' claim was not barred by limitation the law applicable to the claim being that laid down in Article 118 of the second schedule of the Limitation Act of 1871. But the District Judge has dismissed the suit, upon the ground that the matter now in issue should have been raised and determined by the Court which had the charge of executing the decree of the 30th June 1873. He seems to be of opinion that the question at issue in this case is one which relates to the execution of that decree.

5. We are clearly of opinion that the ground upon which the District Judge has dismissed the suit, is erroneous. The decree which the plaintiffs obtained on the 30th June 1873 against the defendants was a decree for land. There was no decree for the recovery of the compensation-money, which is the subject-matter of this suit, and which in fact was drawn from the Collector's Court after the institution of the former suit. The question at issue in this case, is not one which relates to the execution of the decree passed in that suit on the 30th June 1873. Therefore, it is quite clear to us that the order of the District Judge dismissing the plaintiffs' suit cannot be sustained upon the ground upon which he has put his decision.

6. But the defendants (respondents) have urged before us that the District Judge's decision, with reference to the questions of limitation and the bar u/s 7 of Act VIII of 1859, is erroneous. It is contended that the article of the Limitation Act, which is applicable to this case, is Article 60, which runs thus: "For money payable by the defendants to the plaintiff's; for money received by the defendants for the plaintiffs' use." In this case, it cannot be said that the money, which was taken out by the defendants from the Collector's hands, was so taken out for the plaintiffs' use. We are, therefore, of opinion that this article does not apply, and there being no other article in the second schedule of that Limitation Act which is applicable to the facts of this case, it seems to us that the plaintiff's are entitled to maintain this suit within six years from the date of the cause of action under Article 118 of that schedule, and that, consequently, the decision of the District Judge upon the

question of limitation is correct.

7. As regards the objection u/s 7 of Act VIII of 1859, it appears to us that the defendants have not been able to show that, at the time when the first suit was brought, that is to say, on the 7th October, 1871, the plaintiffs had any cause of action in respect of this money as against them. That being so, and it being also admitted that the money was really drawn from the Collector's office after the institution of that suit, we do not think that there is any force in this objection.

8. These are all the objections taken by the defendants to the plaintiffs' claim, and as it appears to us that the title of the plaintiffs in respect of this money cannot now be disputed, the plaintiffs are entitled to a decree. We, accordingly, reverse the decrees of the lower Courts, and direct that a decree be given to the plaintiff's for the money claimed with costs in all the Courts.