Poyran Bibi Vs Lakhu Khan Bepari and others

Court: Calcutta High Court

Date of Decision: March 13, 1901

Final Decision: Dismissed

Judgement

Maclean, C.J.
The only point discussed in this case is whether Art. 127 of the Second Schedule of the Limitation Act of 1877, or Art. 120

of that Schedule applies to it. The facts are stated in the judgment appealed from, and I need not recapitulate them. Upon the point there is

diversity of judicial opinion. The case of Bavasha v. Masummasha I. L. R. 14 Bom. 70 (1889) supports the view that Art. 127 applies ; whilst on

the other hand the cases of Multakke v. Thimmappa I. L. R. 15 Mad. 186 (1891), Amine Raham v. Zia Ahmed I. L. R. 13 All. 282 (1890) and a

case in this Court, of Mahomed Akram Shaha v. Anarbi Chowdhrani I. L. R. 22 Cal. 954 (1895) say that it does not. In all these cases the point

was very fully discussed, and, in my opinion, the view taken by this Court in the case last referred to, is the sounder one of the two. I agree

generally with the reasoning and the conclusion of that case, and so agreeing, I hold that Art. 120, and not 127, of the Second Schedule of the

Limitation Act, applies. I do not think it necessary to state more fully my reasons which depend upon the construction of the articles, as the

grounds for such construction have been stated in the cases to which I have referred.

2. The appeal is dismissed with costs.

Banerjee, J.

I am of the same opinion. I only wish to add this, that apart from the question, whether Act. 127 of the Second Schedule of the Limitation Act can

apply to a Mahomedan family which is not shown to have adopted the Hindu practice of holding property jointly, a question upon which there is

some diversity of opinion, [see the cases of Bavasha v. Masummasha I. L. R. 14 Bom. 70 (1889) Amme Raham v. Zia Ahmed I. L. R. 13 All.

282 (1890) and Mahomed Akram Shaha v. Anarbi Chowdrani I. L. R. 22 Cal. 954 (1895)], the Plaintiff-Appellant''s contention that the case

comes under Art. 127, must fail for the further reason that one of the conditions necessary to bring the case under that article, namely, that the

Plaintiff is a person who is a member of a joint family, and is seeking to enforce his or her right to share in the joint-family property, has not been

satisfied in this case. That that is a necessary condition which must be satisfied in order to bring a case under Art. 127 is clear from the language of

the article itself; and in support of the view I take, I may refer to the case of Kartick Chunder Ghuttuck v. Saroda Sundari Debi I. L. R. 18 Cal.

642 (1891) and that the condition just referred to is not satisfied in this case is clear from the finding of the lower Appellate Court in the following

passage in its judgment. ""The Plaintiff cannot avail of the provisions of Art. 127 of Sch. II of the Limitation Act XV of 1877, because that article

presupposes the existence of a joint family and proceeding on that hypothesis the person who claims a share in joint-family property must be a

member of the family which the plaintiff admittedly is not, as she ceased to be a member of the family since her marriage, living, as she does, in the

house of her husband.