

(1868) 12 CAL CK 0015**Calcutta High Court****Case No:** Regular Appeal No. 19 of 1868

Umatara Debi

APPELLANT

Vs

Krishnakamini Dasi and
OthersRESPONDENT

Date of Decision: Dec. 2, 1868**Final Decision:** Dismissed

Judgement

Phear, J.

This is a suit to recover possession of certain land from the defendants. The present plaintiff also, in 1854, instituted a suit against the present defendants to recover possession of land from them. I am distinctly of opinion from the evidence that the land which is the subject of the present suit was part of the land which the plaintiff sued for in 1854. She was defeated in the suit of 1854, and has never had possession of the land in question since that date. It follows, therefore, as it appears to me, that her cause of action was in both suits the same. In both she sought to recover from the defendants the same land on the ground that it was wrongfully withheld from her by them, and the wrong-doing of the defendants was the same act or series of acts in the one case as in the other. It is true that the title to possession on which the plaintiff now relies is different from that which she set up in the suit of 1854. In the present suit, she claims the land as being part of her talook Shahazadpore, while in 1854 she maintained that this land was towfir which she had reclaimed and occupied as proprietor of the talook, and on that account was entitled, as against the defendants, to have settled with her by Government. But I think the difference in the title put forward does not change the cause of action within the meaning of Section 2 of Act VIII of 1859.² The plaintiff's cause of action, that which obliges her to seek the aid of a Court of Justice, is simply this, namely: that she is, as she alleges, wrongfully deprived by the defendants of the enjoyment by possession of certain land which she is entitled to have. It is for her at the trial to make out such a title to possession as will prevail against the defendants. If she omits to put forward her strongest title or her real title, so much the worse for her. The adjudication in the suit determines as between her and the defendants not only the matter of the particular title which she sets up, but the

actual right to possession at the date of the plaint, by whatever title it might be capable of being then supported.

2. It appears to me that this suit is barred by the operation of Section 2 of Act VIII of 1859; and, consequently, that this appeal should be dismissed with costs.

Hobhouse, J.

I am of the same opinion.

Unless suits previously heard and determined.	Sec. 2:--The Civil Court shall not take cognizance of any suit brought on a cause of action which shall have been heard and determined by a Court of competent jurisdiction in a former suit between the same parties or between parties under whom they claim.
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