

(1880) 02 CAL CK 0007**Calcutta High Court****Case No:** None

Saroda Soondury Dossee and

APPELLANT

Another

Vs

Doyamoyee Dossee and Another

RESPONDENT

Date of Decision: Feb. 5, 1880**Citation:** (1880) ILR (Cal) 938**Hon'ble Judges:** Tottenham, J; Jackson, J**Bench:** Division Bench**Judgement**

Jackson, J.

Now, the plaintiff's, on appeal before us, have relied ultimately upon Article 127 and Article 142 of the Limitation Act (IX of 1871), both of which are referred to in the grounds of special appeal. It appears to me that Article 127 clearly cannot apply. That relates to suits by a Hindu excluded from joint family property to enforce a right to share therein, and in order to bring the suit within that description, it will have to be shown that there had been joint family property, and that the plaintiffs have been excluded from the enjoyment of it, and therefore desire to enforce their right to share therein. I should be inclined to hold that the word "excluded" implies previous inclusion, and that such a suit as this could not be maintained by a person who had never had any portion of the joint family property; but at any rate it would be necessary to show that there had been joint family property. Now, from the finding of the Judge, it is clear that that is not the state of things in the present suit, because, as the Judge finds that the widow had no possession or enjoyment of this property, it did not descend to her three daughters, and therefore never became joint family property. Now we turn to Article 142. Under that article, it is clear that only so much of the suit as relates to possession of Immovable property could be included. This will not comprise the stock, debts of the shop, or business or anything but the bare ground and the premises standing upon it. But let us consider whether even so far the present suit is maintainable. The description of that article is "like suit," that is, a suit for possession of Immovable property, "by a Hindu entitled to

the possession of Immovable property, on the death of a Hindu widow." Now, it appears to me that the person entitled to the possession of Immovable property on the death of a Hindu widow means a person who succeeds to a certain right which is in being on the death of the Hindu widow, and that if the title which would have enabled that widow to hold the estate as a widow had become barred before her death, the reversioner, who would be the next taker, is not to be entitled to possession of the property on the death of the widow. Consequently, it appears to me that this is not a suit which in any sense will come under the words of Article 142, and that frees us from the necessity of considering how far this article and the Act of 1871 would operate, regard being had to the time of the widow's death, because it appears to me that the plaintiffs are not persons entitled to possession of the property on the death of the widow. I think, therefore, this appeal fails, and must be dismissed with costs.