

(1917) 07 CAL CK 0038

Calcutta High Court

Case No: None

Gridutta Sarma, and on his death
His Heiress And Legal
Representative His widow
Jogemoya Debi

APPELLANT

Vs

Durga Dutta Sarma and, Ors.

RESPONDENT

Date of Decision: July 17, 1917

Citation: 42 Ind. Cas. 260

Hon'ble Judges: William Chitty, J; Beachcroft, J

Bench: Division Bench

Judgement

1. This is an appeal by defendant No. 1, Giri Dutta Sarma, against a decree of the Subordinate Judge of the Assam Valley Districts confirming the decree of the Munsif of Gouhati. The suit was brought by several persons as Bardeories of the Janardan temple against the 1st defendant, for a declaration that the land in dispute was Janardan temple land and for a permanent injunction against the first defendant restraining him from alienating the same or treating it as his personal property. 31 Bardeories joined in bringing the suit and 7 others were added as pro forma defendants. Later on 23 more Bardeories were added as parties defendant, thus bringing on the record, as the Courts have found, all the Bardeories who are connected with this temple.

2. The only question of law which has been argued before us is that the suit was not maintainable except under the provisions of Section 2, Civil "Procedure Code. It was argued that if this decree was allowed to be passed, the appellant might be subjected to a number of" suits at the instance of other people. We agree with the learned Subordinate Judge when he says that Section 92 is an enabling section. The proviso to Section 92 enacts that no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to, except in conformity with the provisions of that sub-section." From that we infer

that only suits for one or more¹ of the reliefs in Sub-section (1) must necessarily be brought u/s 92. The general power of suit is not taken away, and, if it does not fall within the limitations provided by that section there is no reason why such a suit should not lie, provided that it is in other respects maintainable. It is clear that in this case the relief granted does not fall within any one of the specified reliefs in Section 92, Sub-section (1). We think, therefore, that the suit as framed does lie, and that it was not necessary for the plaintiffs to sue under the provisions of Section 92.

3. The second point which has been put before us is as to the adverse possession of defendant No. 1 of the land in suit. Both the Courts have found against him in this respect that the land in suit has always been held as temple land and that he has acquired no title by adverse possession, This is a question which is concluded by the findings of fact of the lower Appellate Court.

4. The appeal is accordingly dismissed with costs.