

Gobinda Chandra Bhattacharjee Vs Upendra Chandra Bhattacharjee and Others

Court: Calcutta High Court

Date of Decision: June 24, 1919

Judgement

1. This appeal arises out of a suit for establishment of the Plaintiff's right to, and recovery of possession of a 2 annas share in, a certain estate

which originally belonged to one Ram Kishore Bidyabhusan. It appears that Ram Kishore had two sons, Daibaki Nandan, Defendant No. 5. and

Ram Lochan. Ram Lochan had four sons of whom Lakhi Bhattacharjee was one. Lakhi left a daughter Udaytara and the Plaintiff is the son of

Udaytara.

2. It was alleged by The Plaintiff that Lakhi and after him Udaytara and after her death, the Plaintiff himself was in joint possession, of the property

with the Defendants. In the plaint it was stated that the Plaintiff was born on the 8th March 1893, that his mother died on the 0th August 1897, and

that the Plaintiff attained majority on the 31st March 1911. The suit was instituted on the 26th February 1913. There was no express denial of the

date of the Plaintiff's birth and of his attaining majority in the written statement.

3. The main defence. So far as it relates to the question raised in this appeal, was that the suit was barred by limitation.

4. The Courts below have apparently considered the question of limitation on the footing that Art. 141 of the Limitation Act applied, and although

there was no express denial of the date of the birth of the Plaintiff and of his attaining majority as given in the plaint, the learned District Judge went

into that question and came to the conclusion that the suit had been instituted more than three years after the Plaintiff attained majority.

5. Now, Art. 141 of the Limitation Act would apply only if Udaytara was dispossessed; in that case the Plaintiff as the reversioner would have 12

years from the date of the death of his mother, and the question, whether the suit was brought within three years of his attaining majority would then

arise. The Plaintiff, however, did not sue on the ground that his mother had been dispossessed. His case was that the properties were joint family

properties, that after Lakhi's death his mother was entitled to a 2 annas share and that on her death he was similarly entitled to that share. If the

properties were joint, then it would be a case between co-sharers. The learned District Judge says ""There was indeed some mention of the suit

being among co-sharers but how any question of 1 co-sharers will affect limitation in this case, was not made out by any satisfactory argument.

6. If, however, as stated above, the property was a joint property, it would be a case between co-sharers and in such a case it must be shown that

there was exclusion or ouster of Lakhi or of his daughter more than 12 years before the suit.

7. The principle upon which the question of limitation as between co-sharers is to be determined, has been laid down in various cases and we may

refer to the case of Ayennenussa Bibi v. Sheikh Isuf 16 C.W.N. 849 (1912) where Jenkins, C.J., observed ""The law on the subject I take to be

well-settled. In order to establish adverse possession by one tenant in common against his co-tenants there must be exclusion or ouster and the

possession subsequent to that must be for the statutory period. What is sufficient evidence of exclusion must depend upon the circumstances of

each case. Mere non-participation in rent and profits would not necessarily of itself amount to an adverse possession but such non-participation or

non-possession may in the circumstances of a particular case amount to an adverse possession. Regard must be had to all the circumstances and a

most important element is the length of time." Reference may also be made to the cases of Loke Nath Singh v. Dhakeswar Prosad Narayan Singh

21 C.L.J. 253 (1914), Hurdit Singh v. Gurmukh Singh 28 C.L.J. 437 (P.C.) (1918) and Chintamani Pramanik v. Hridoy Nath Kamila 29 C.L.J.

24 (1913).

8. It has been contended before us by the learned Pleader for the Respondent that the Defendant's case was that Lakhi himself had no right or

possession of these properties.

9. Now, the questions whether these properties were joint properties and whether Lakhi or Udaytara was in joint possession, have not been gone

into by the learned District Judge. He observed in his judgment that the Subordinate Judge's decision on the question whether the properties were

joint or not, was not exhaustive and it would probably have been necessary to remand the case for finding on that point had not the question of

limitation disposed of the case. There is no doubt, that the first thing the Court had to decide was whether the properties were joint and whether

Lakhi or Udaytara was in possession as a co-sharer. The learned Pleader for the Respondent says that some of the properties were sold away

more than 12 years before the suit. None of these questions has been gone into by the Courts below.

10. The decrees of the Court below must therefore be set aside and the case sent back to the Court of first instance in order that the questions

mentioned above may be gone into and the case decided according to law. Costs to abide the result.