(1919) 06 CAL CK 0039

Calcutta High Court

Case No: Appeal from Appellate Decree No. 215 of 1918

Gobinda Chandra Bhattacherjee		APPELLANT
	Vs	
Upendra Chandra Bhattacharjee and Others		RESPONDENT

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 Bhattacherjee 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 bom on the 8lst March 1893, that his mother died on the 0th August L897, 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 us 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 ease 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 Chintamoni 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.