

(1914) 04 CAL CK 0040

Calcutta High Court

Case No: L.P. App. No. 11 of 1913

Sachindra Kishore Dey

APPELLANT

Vs

Rajani Kant Chuckerbutty

RESPONDENT

Date of Decision: April 2, 1914

Final Decision: Dismissed

Judgement

Jenkins, C.J.

This is a suit brought to recover possession of land, and to understand the legal question at issue it is necessary to state briefly what the facts of the case are. There was a Hindu father governed by the Dayabhaga school of law who at his death left two daughters Kashiswari and Harasundari and a daughter-in-law Umatara, the wife of a predeceased son. Kashiswari had two sons. On the death of the father Kirtinarain the daughters who were his heirs did not obtain possession, but Umatara, his daughter-in-law, did. She purported to alienate the estate to the predecessor of the Plaintiff, and the possession of Umatara and those who claim under her by purchase was for more than twelve years. Not only was this possession for more than twelve years, but this possession was adverse to Kashiswari and Harasundari. The result was that sec. 28 of the Indian Limitation Act operated with the consequence that the right of the daughters became extinguished. By some means, which are not disclosed, Kashiswari, Defendant No. 3, and her sons Defendants Nos. 1 and 2 afterwards got into possession of the property, and the present suit is to recover possession from them. Defendants Nos. 1 and 2 have no present title. That would have been with Kashiswari, Defendant No. 3, had it not been extinguished. So far as the original title to a moiety is concerned, it is not suggested before us that the claim of the Plaintiff could be resisted, but it is said that inasmuch as Harasundari died in 1306, the plea of adverse possession and the consequent extinguishment cannot prevail as to the 8 annas that originally survived to Kashiswari on Harasundari's death. So the problem that arises in this case is what was the effect of adverse possession against the two daughters who succeeded on the death of their father under the Dayabhaga system of law. The nature of the right

acquired by these two daughters is made apparent by the decision of the Privy Council in *Amrita Lal Bose v. Rnjanee Kanto Mitter* L. R. 2 I. A. 113 (1875): and, it is abundantly clear from that case that the survivor of the two daughters came in on the death of her sister not by way of inheritance as reversioner, but by right of survivorship. It necessarily follows from this that Art. 141 does not apply and that the surviving daughter cannot now claim that she acquired a title, on the death of Harasundari, of the nature described in Art. 141.

2. The result appears to me to be that so far as Kashiswari is concerned, her right was extinguished not only in the original 8 annas that devolved on her, but in respect of the whole 16 annas which passed to her and her sister as a single inheritance on the death of their father.

3. It is unnecessary for us now to express any opinion as to what will be the position of Defendants Nos. 1 and 2 on the death of Kashiswari. That depends on considerations which are outside the problem with which we have to deal. It is sufficient for our purpose to say that there was twelve years' adverse possession as against Kashiswari and Harasundari, and as against them and the survivor of them there was, by virtue of sec. 28, an extinguishment of their right in favour of the Plaintiff or those under whom the Plaintiff claims. This in effect is the view taken by Mr. Justice D. Chatterjee, and we must therefore dismiss this appeal with costs.