
(1870) 04 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 1487 of 1869

Channu Lal Sahu

APPELLANT

Vs

Manu Lal and Others

RESPONDENT

Date of Decision: April 14, 1870

Judgement

Markby, J.

It appears in this case that on the 7th June 1858, the defendant No. 1 purchased the share of Krishna Prasad Sing and others in certain property. On the 5th March 1860, the plaintiff purchased the share of Krishna Prasad Sing, Raghu Nath Prasad Sing and some other persons, that is to say, purchased the same shares as the defendant No. 1 did, and also some other shares. On the 2nd March 1861, the sale to the defendant No. 1 was set aside, but on appeal to the Judge by a compromise between the defendant No. 1 and Krishna Prasad Sing, the decision of the first Court was allowed to be reversed.

Subsequently, the plaintiff brought a suit to recover the whole of the property which he purchased on the 5th March 1860 wholly ignoring the sale made on the 7th June 1858, to the defendant No. 1. As to so much of the property as was in excess of Krishna Prasad's share he succeeded, but failed as to the rest, because the Court thought that so long as the sale to defendant No. 1 of the 7th June 1858 stood unreversed, he could not recover Krishna Prasad's share. The present suit is represented to us to be brought in effect to have it established that that sale has been reversed, and the effect of succeeding in this suit would be to get rid of that sale. The lower Appellate Court has refused to go into the appeal, on the ground that the present claim has been barred u/s 2, Act VIII of 1859, the cause of action of the plaintiff having been heard and determined in the suit just alluded to.

2. The pleader for the respondent has relied upon two decisions of this Court, the one in *Abhiram Das v. Sriram Das* 3 B.L.R., A.C., 421, and the other in [Umatara Debi Vs. Krishnakamini Dasi and Others](#) , It seems to us that the present case stands clear of both those decisions. In both those cases the plaintiff had, at the time when the suit was first brought, a complete title to recover the property he sued for, the only difference was a

difference in the way in which that title was to be established. Here the decision or order, by which the plaintiffs suit, as to Krishna Prasad's share was dismissed, was in effect that so long as the defendant, No. 1, held the sale certificate of the 7th June 1858, no other person could get a title to that property. It is to get rid of that very sale, that the plaintiff brings this present suit. This seems to us, therefore, a different suit than the one previously brought by the plaintiff upon a title of his own which then existed. The result will be that the judgment of the lower Appellate Court is reversed, and the case sent back to that Court to be tried, and determined on the merits, the suit not having been barred under the provisions of section 2, Act VIII of 1859.