(1868) 06 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 2809 of 1867

Kedarnath Mookerjee		APPELLANT
	Vs	
Mathuranath Dutt		RESPONDENT

Date of Decision: June 15, 1868

Judgement

Glover, J.

We have no hesitation in rejecting this cross appeal. The objection was never before taken at any stage of the proceedings, and the plaintiff has now been much unfairly taken by surprise. The rulings of this Court, which lay down that limitation being a question bearing on jurisdiction may be taken up at any time whether pleaded or not, refer to cases where the defect is patent on the record, and not to those which would require further investigation to ascertain whether there was a defect or not. The plaintiff appeals on the ground that his grandmother did not relinquish the jote, and that if she had done so, her act of relinquishment cannot bind him. And it is contended on the other side, that as the plaintiff failed to prove that Chandra Sekhar had been in possession as his trustee, and had been ousted by the defendants, the case should have stopped there; that no adjudication on the question of relinquishment by the grandmother was necessary. This last contention is, as it appears to us, unsound. It is not denied that the land in dispute was the plaintiff''s hereditary jote, and it was, therefore, very material to try the issue, whether or no Chandra Sekhar had been put in possession by the grandmother. The plaintiff, being a minor at the time, would not be affected by Chandra Sekhar''s possession, and his failure to prove that his grandmother had made over the land to that individual ought not to have injured his case. But were it otherwise, as the Judge did not decide the case solely on this failure to prove Chandra Sekhar''s possession, but adjudicated also on the defendant''s pleas, the plaintiff would in any case be entitled to have the Judge''s decision taken as a whole, and to appeal against that part of it, which made the act of his grandmother binding upon him.

2. The Judge, in coming to this finding, has mainly relied upon a decision of this Court, M. Muniruddeen v. Mahomed Ali (6 W.R., 67) in which it is laid down that

"when a cultivating ryot goes away from the land which he has occupied, and neither cultivates nor pays rent for it, he has wholly relinquished the land; and he finds that as the plaintiff would have been bound by the act of his grandmother, had she formally relinquished the jote, so he is equally bound, under this precedent by her informal relinquishment. No doubt, as in the case quoted, a ryot going away would altogether relinquish his land, but here the question is not whether or no the grandmother relinquished the jote, but whether her doing so binds her grandson, and we are not disposed to admit that it did so. The plaintiff was a minor at the time; and to make the relinquishment valid, it must be shown that it was for the minor''s benefit so to make it. Nothing of this kind has been shown us, nor has the plea ever been raised, and prima facie, to give up an hereditary jumma would be the reverse of beneficial to a minor. We think, therefore, that we ought to reverse the decision of the Lower Appellate Court with costs, and decree that the plaintiff recover possession of his hereditary land from the defendants.

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[1][Sec. 346:--Upon the hearing of the appeal, the respondent may take any objection to the decision of the Lower Court which he might have taken if he had preferred a separate appeal from such decision.]

Respondent may abject to decision of Lower Court in the same manner as if he had preferred a separate appeal