

(1867) 03 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 1625 of 1866

Radhomonee Dasse and Others

APPELLANT

Vs

Jodoonath Chowdhry and Others

RESPONDENT

Date of Decision: March 12, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

The plaintiffs in this case were dispossessed under a sale in execution of a decree against Hurreeram and others. The plaintiffs' property was not liable to be sold under that execution; and they bring their suit now to establish their title, and to recover possession. That suit is brought within twelve years from the time at which they were dispossessed. It appears to the Court that the suit is brought within proper time, and that the period of limitation is twelve years from the time of dispossession, according to cl. 12, s. 1, Act XIV of 1859. It is said that there had been a summary order made in this case, in which it was determined between the plaintiffs and the execution creditor in the former case that the plaintiffs' property was liable to be sold under the decree. But there was no summary order in this case. If the Court had summarily decided that the property was liable to be sold, then it would be necessary to get rid of that summary order, and the suit must have been brought within one year from the date of that order, according to cl. 5, s. 1, Act XIV of 1859, or within two years from the time of the passing of Act XIV of 1859, under s. 18 of that Act.

2. But so far from there being a summary order in this case, the Courts refused to make any summary order, and they gave their reasons for such refusal. They referred to the Circular Order of the Sudder Court of the 10th June 1842, and stated that the rights and interests of the defendants in the property would be sold, and that intimation of the plaintiffs' claim would be given at the time of sale. The rights and interests of the debtors under the decree having been sold, that did not pass the plaintiffs' interests, if they had any, in the property; and if they were dispossessed, having an interest in the property, they are entitled to bring their suit within twelve years from the time of dispossession; consequently the suit is not

barred by limitation.

3. The case of Ram Gopal Roy v. Nundo Gopal Roy 4 W.R., 42 which was cited, and which was decided by Trevor and Campbell, JJ., to which we have already adverted in the decision just passed in Protap Chunder Chowdhry v. Brojolall Shaha Ante, p. 638, is not applicable to the present case. This case will be returned to the Division Bench which referred it for our opinion, in order that that Court may pass such further orders as are necessary.