

(1868) 06 CAL CK 0021

Calcutta High Court

Case No: Special Appeal No. 2290 of 1867

Tulsiram Das

APPELLANT

Vs

Mohamed Afzal alias Mirza

RESPONDENT

Date of Decision: June 11, 1868

Final Decision: Dismissed

Judgement

L.S. Jackson, J.

This is a suit to set aside a survey award, and obtain a declaration of right, that is, confirmation of possession in the land comprised in that award. It appears that the land affected by the award belonged to a variety of parties, one of whom was Krishna Chandra, another Bairagi Das, and there were other parties who were his (Bairagi"s) coparceners. Krishna Chandra, one of those who were affected, appealed against the survey award, but Bairagi Das did not so appeal. The present suit, however, is on the part of Bairagi Das and his co-sharers. The Lower Appellate Court has held that the suit is barred, because it was not brought within three years of the date of the final award against them. They maintain that the suit having been brought within three years of the decision on the appeal of Krishna Chandra Das, it is not barred by the law of limitation. It appears to us, however, that they are not entitled to the benefit of Krishna Chandra"s appeal. His rights and those of the present plaintiffs were distinct and separate. Then a separate question arises as to the plaintiffs other than Bairagi Das. They contend that they were not parties, i.e., they did not appear before the Survey Authorities; and as they were not parties to that award, they are not bound to bring their suit within three years from its date. In advancing this, they set out all the ground upon which their present action is based. If they were not parties to that award, and, consequently, were not affected by it, and, further, were not dispossessed, they have no cause of action whatever. If, on the other hand, the mere award gives them a cause of action (for they have no other), then their suit must have been instituted for the purpose of getting rid of that award, and therefore they must sue within the three years prescribed by the law. It appears to us, then, that all parties are barred, and that the decision of the

Lower Court is right. The special appeal is, accordingly, dismissed with costs.