

(1866) 02 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 1990 of 1865

Sheikh Inayet Hossein

APPELLANT

Vs

Sarifunnissa

RESPONDENT

Date of Decision: Feb. 7, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

The case is very clear. The Principal Sudder Ameen, in his first decision, held that Regulation XVII of 1806 was promulgated in Sarun on 7th January 1807, and he dismissed the plaintiff's suit. That decision was correct, if the Regulation was promulgated, as he stated, and had not been promulgated prior to the 28th September 1806. Unfortunately, in another case,--Sheik Bukshush Fuzeeloonissa W.R., January to July 1864, 189--which came before a Division Court, the attention of the Judges was not called to the following words in s. 1 of the Regulation:-- "The following rules have been enacted to be in force throughout the whole of the provinces subject to the immediate government of the Presidency at Fort William from the date of their promulgation;" and they held that the Regulation took effect from the date on which it was passed by the Governor-General in Council, viz., 11th September 1806. The decision was passed under a mistake, and cannot be upheld by the Full Bench. But the Principal Sudder Ameen, acting on that judgment, granted a review, and reversed his first decision.

2. Now the Principal Sudder Ameen must have been either right or wrong in finding that the Regulation was promulgated in Sarun on 7th, January 1807, acting upon the statement of the Judge of the Zilla in another case between other parties. If he was right, the Act was promulgated after 28th September 1806. If wrong there was no evidence that it was promulgated at an earlier date. The onus of showing that it was so promulgated rested on the plaintiff, and as he gave no evidence upon the subject, he was not entitled to a decree. There is a strong presumption against the plaintiff arising from the fact of his not having brought the suit for nearly sixty years after the 28th September 1806. We think there are no grounds for remanding the case, as we are asked to do. The decision on review must be reversed, and we

decree that the plaintiff's claim be dismissed, with all costs in the lower Courts and the costs of this appeal, with the usual interest.