

(1877) ILR (Cal) 389

Calcutta High Court

Case No: None

Bhubon Mohini Dabea

APPELLANT

Vs

Chunder Mohun Roy
and Others

RESPONDENT

Date of Decision: April 18, 1877

Acts Referred:

Limitation Act, 1963 " Section 4

Citation: (1877) ILR (Cal) 389

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

We think on the face of these proceedings we must hold that the suit is barred by limitation. The mortgage is dated the 24th of

September, 1850; the default was made on the 24th September, 1854; notice of foreclosure issued on the 7th February, 1860. It is not shown on

what date the notice was served, but the foreclosure must have become absolute some time before the 26th June, 1861, because the case was

struck off on that date with permission to bring a regular suit, as appears from the plaint. Therefore, the title of the plaintiff must have become

absolute at least as early as the 26th June, 1861, and the suit would be barred on the 26th June, 1873.

2. Now, on the 6th February, 1873, the plaintiff" presented a petition to be allowed to sue in forma pauperis to recover possession. She was

ordered to appear on the 1st March, and she did not do so. She was again ordered to appear on the 15th June, and she did not do so; and the

case was struck off" so far as the application to sue in forma pauperis was concerned. The matter was reopened, and she was ordered to appear

on the 9th August. On the 7th August, that is, two days prior to the date on which she was ordered to appear, she put in a petition asking that the

petition which she then made might be joined with her application to sue in forma pauperis, and a number given to the suit, and the suit tried on the

civil side of the Court. With that petition she paid in the regular amount of stamp fees as in an ordinary suit. The order was that the suit should be

registered and proceeded with in the usual way. The question we have to decide is, whether we are to reckon the plaint in this suit as filed on that

date, namely on the 7th August, or whether the plaintiff can take advantage of the clause in the explanation of Section 4 of the Limitation Act,

which says that a suit in the case of a pauper is instituted when his application for leave to sue as a pauper is filed. It is, I think, clear that that

provision in favour of a pauper only applies in cases where, u/s 308 of the Civil Procedure Code, the application for leave to sue in forma pauperis

is granted and the suit is numbered and registered. In that case, by the provisions of that section, the application becomes the plaint in the suit, and

the suit is considered as having commenced when the petition, which has subsequently been turned into a plaint, was filed. But in this case, in

consequence of the second application made by the plaintiff herself, enquiry into her pauperism was stopped, and she elected to proceed in this

case as an ordinary suitor and not as a pauper. I think we must take it that she having put in that petition stood merely in the same position as if she

had filed her suit on that date. The District Judge seems to think that she will be entitled to the benefit of the explanation of Section 4 of the

Limitation Act, if she was in fact a pauper when the original application to sue as a pauper was filed. I think she had no right to reopen that matter at

all when it was closed on the application of the plaintiff herself. In order to give her the benefit of that explanation it was necessary that her

application should be granted, in which case only her original application for leave to sue as a pauper could be treated as a plaint. Therefore, the

date on which the present suit was filed being the 7th August, 1873, and the date on which she was entitled to possession being on some day prior

to the 26th June, 1861, the suit is necessarily barred. The decision of the Court below will be reversed and the suit dismissed with costs.

Prinsep, J.

3. I wish to add only a few words. The decision of this Court will proceed on the point of limitation on the facts which are most favourable to the

plaintiff. The point now under decision depends entirely upon the question as to whether the application to sue as a pauper is to be treated as a

plaint. The application can be treated as a plaint only when the leave to sue as a pauper has been granted. In its present state, it is, therefore,

incomplete. It is only made complete so far as the present suit is concerned by the payment of fees; and, therefore, it became a plaint on the 7th

August, 1873, on which date it was clearly barred.