

(1868) 06 CAL CK 0022

Calcutta High Court

Case No: Special Appeal No. 3137

Asu Mia

APPELLANT

Vs

Raju Mia

RESPONDENT

Date of Decision: June 25, 1868

Judgement

Phear, J.

In this case, the suit is brought for the recovery of immoveable property, and the Lower Appellate Court has substantially found that the cause of action arose more than 12 years previous to the institution of the suit. The Lower Appellate Court has, accordingly, held that the suit is barred by the operation of Clause 12, Section 1, Act XIV of 1859. The special appellant taking the facts as found by the lower appellate Court, objects that the period of limitation in this case is not 12 years but 60 years, because the plaintiff claims the land which is the subject of suit as lessee under Government. The words of clause 12 are perfectly general. They certainly apply in terms to this case, and, therefore, the objection of the special appellant cannot be supported, unless there is something either in Act XIV. of 1859, or in some later Act, to prevent Clause 12 of Section 1 from having operation in cases where the plaintiff sues as lessee of Government property. Now the only legislative provisions which bear upon this point, are those contained in Section 17, Act XIV of 1859. That section says: "This Act shall not extend to any public property" or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or " rules of limitation now in force." If, therefore, this is a suit brought to recover public property, or to assert a public right, or is a suit for the recovery of public revenue, or to make good any public claim whatever, then Clause 12, Section 1, has no operation in the case. But obviously the claim of the plaintiff is a purely private claim. He seeks to assert a private right. The remedy that he asks for would result solely in his own benefit. It does not appear by the terms of his plaint, nor is any fact disclosed by the answer of the defendant, which serves to indicate in any way that public property is in question in this suit, or that any public right or claim is sought to be vindicated.

2. In truth, if the statements of the plaintiff and the defendant are taken together, it would seem that the Government, so far from having suffered or being likely to suffer any loss in regard to public property or public right under the circumstances of the case is actually receiving rent from two parties, namely the plaintiff and the defendant, simultaneously, for the plot of land, which is the subject of suit. In short, there is no pretence for saying that this is a suit falling within the reservation of Section 17 of Act XIV of 1859; and, consequently, the words of Clause 12, Section 1, of that Act must have full operation. That being so, on the finding of fact of the Lower Appellate Court, which is not impeached by the special appellant, the plaintiff's suit is barred, and the decision of the Lower Appellate Court is right." We, therefore, dismiss the appeal, but without costs, as no one appears for the respondent.

¹Act not to extend to public property not to suits for the recovery of public claims.

[Sec. 17:--This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, but such suits shall continue to be governed by the laws or rules of limitation now in force.]