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(1869) 06 CAL CK 0040

Calcutta High Court

Case No: Special Appeal No. 173 of 1869

Jagarnath Dutt	APPELLANT
Vs	
Ganga Charan Roy Chowdhry and Another	RESPONDENT

Date of Decision: June 29, 1869

Judgement

Hobhouse, J.
In this case, the plaintiff sued for a certain share in certain lands on the following allegations:--He said that the lands in question belonged as a whole originally to one Bijyanarayan Chowdhry. This Bijyanarayan died leaving two daughters, viz., Chandramani and Gangamani. Chandramani died in 1242 (1835), Gangamani died in 1266 (1859). We are not told what became of this property during the 8 years from 1266 (1859) to 1274 (1867) (and this in itself is a rather suspicious circumstance), but in the year 1274 (1867) the plaintiff, the son of Gangamani, sued to recover one-half of the lands that had originally belonged to Bijyanarayan, and which had, it is now alleged, been alienated by Chandramani. The defendants pleaded the Statute of Limitations, alleging that the plaintiff"s cause of action arose on the death of Chandramani in 1242 (1835), and that as he had not sued within 12 years of that date he was out of Court.

2. The lower appellate Court has held that limitation has not barred the suit.

3. The defendants appeal specially before us on the ground that this judgment is bad in law.

4. It seems to us that this contention in special appeal is good. On the death of Bijyanarayan, his two daughters admittedly succeeded to the estate; admittedly also each of them had, subject to certain contingencies, only a life-interest in that estate, and had the estate remained in status quo it is not denied that the survivor of the two daughters would have taken the whole of it. But it is contended that when one of the two daughters alienated her share of the estate, there was no right of action existing in the other daughter to recover that portion of the estate which was alienated. Now it is not

contended that Gangamani joined in the alienation made by Chandramani; neither is it denied that ordinarily on the death of Chandramani Gangamani would as survivor have taken the whole estate; neither is it denied that ordinarily Chandramani had only a life-interest in that estate. Clearly therefore it seems to us that on the death of Chandramani, Gangamani the survivor would have a right of action to recover any portion of the joint life estate which had been alienated without her consent.

5. It is, however, contended by the pleader for the special respondent that he had no cause of action during the life of Gangamani and that his cause of action did not accrue to him until her death. The case therefore really turns upon what is, in this particular case, the construction of the words "cause of action" in the Statute of Limitation as regards reversioners.

6. On that point we think that there is a dictum at least if not a ruling in the Full Bench case of Nabin Chandra Ckuckerbutty v. Iswar Chandra Chuckerbutty Case No. 460 of 1867; April 29th, 1868 (B.L.R. Sup. 1008). The learned Chief Justice there pays:-- "It is said that the reversionary heirs could not sue during the life-time of the widow, and that therefore they ought not to be barred by any adverse holding against the widow at a time when they could not sue. But when we look at the widow as a representative, and see that the reversionary heirs are bound by decrees relating to her husband"s estate which are obtained against her without fraud or collusion, we are of opinion that they are also barred by limitation, by which she without fraud or collusion is barred;" and then the Chief Justice goes on to say, "when therefore we construe the words "cause of action" in the Statute of Limitations, we must consider them as referring not to a new cause of action accruing to the reversionary heirs personally and individually, but to the cause of action which accrued to the heir or representative for the time being of the deceased."

7. Now in this case, at least from the death of Chandramani in 1242 (1835), there has been possession held by the defendants adverse to somebody, if the plaintiffs" case be right. The question therefore is as to whom it was adverse, and we think that it was adverse to Gangamani who was direct heir to all the property on death of Chandramani, and therefore we find that under the Full Bench Ruling we have just quoted, the words "cause of action" refer not to the new cause of action which accrued to the reversioners on the death of Gangamani, but to the cause of action that accrued to Gangamani herself on the death of Chandramani in 1242. This being so, we think that the plaintiffs" claim is barred by the Statute of Limitations. We accordingly reverse the judgments of the lower Courts, and direct that the plaintiffs" suit be dismissed with all costs of this Court, and of the Courts below.