
(1868) 07 CAL CK 0033

Calcutta High Court

Case No: Special Appeal No. 222 of 1868

Gopal Chandra Dey

APPELLANT

Vs

Pemu Bibi

RESPONDENT

Date of Decision: July 3, 1868

Judgement

Kemp, J.

The decision of the Judge in this case is clearly wrong. The plaintiff's cause of action did not arise from the date of his purchase of the decree, but from the data of the order of the Collector referring him to a civil suit, or to such remedy as he might think proper.

Moreover the conduct of the defendant being fraudulent, the period of limitation would run from the time of the discovery by the plaintiff of such fraud. The suit was well within time from that date. On the merits, Section 206 of Act VIII of 1859 has nothing to do with this case, which is a case under Regulation VII of 1799. The defendant, after selling to the plaintiff his rights in the decree obtained under the above Regulation, and after substituting the plaintiff's name in his place as decree-holder, fraudulently received from the judgment-debtor certain monies under that decree, subsequent to the sale by him to the plaintiff. The plaintiff is, therefore, entitled to recover the amount claimed in the suit. The decision of the Judge is reversed, and the decision of the Court of First Instance, which is correct in all respects, confirmed with costs in all the Courts.

¹Computation of period of limitation in suits where the cause of action is founded on fraud.

[Sec. 10:--In snits in which the cause of action is founded on fraud, the cause of action shall be deemed to have first arisen at the time at which such fraud shall have been first known by the party wronged.]

²Payment of moneys under decrees, etc.

Adjustment of decree to be made through the Court.

[Sec. 206:--All moneys payable under a decree shall be paid into the Court, whose duty it is to execute the decree, unless such Court or the Court which passed the decree shall otherwise direct. No adjustment of a decree in part or in whole shall be recognized by the Court unless such adjustment be made through the Court or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred.]

³Limitation of six years applicable to all suits not specially provided for.

[Cl. 16, Sec. 1:--To all suits for which no other limitation is hereby expressly provided--the period of six years from the time the cause of action arose.]