
(1870) 02 CAL CK 0030

Calcutta High Court

Case No: Special Appeal No. 2400 of 1869

Rajkishor Dutt Roy
alias Ramkishor Dutt
Roy

APPELLANT

Vs

Girish Chandra Roy
Chowdhry and Others

RESPONDENT

Date of Decision: Feb. 14, 1870

Judgement

Phear, J.

I think that this case is governed by the decision of the Full Bench in Nabin Chandra Chuckerbutty v. Iswar Chandra Chuckerbutty Case No. 460 of 1867; April 29th, 1868 (B.L.R. Sup. 1008). It appears to me that the cause of action, upon which the plaintiff sues, had accrued to his predecessor Narayani. The title by which he has a right to inheritance is essentially the same as the title by which Narayani took and enjoyed it; and the cause of action which gives him a right to sue the defendant is made up of his title to the property which is in dispute on the one side, and the wrongful withholding of that property from him by the defendant on the other side. Although, in one sense, it may be said that he does not claim through his mother, but as heir of the same person to whom his mother had also been heir, yet the title of himself and his mother seems to me the same, and certainly the wrongful withholding of the property, on the part of the defendant, has continued from the time when his mother first became entitled. The plaintiff does not come before the Court resting upon any right to the property which is superior or antecedent to his mother's right, but as I think precisely on the same right; the formerly much vexed question in English Real Property Law as to the distinction between the per and the post does not, as I think, here occur. I am, therefore, of opinion that the cause of action on which the plaintiff sues has been in existence since his mother's right accrued, that is for a period antecedent to the bringing of the suit which is far greater than the period of limitation. This has been the view taken by the Courts below, and I think, therefore, that this appeal should be dismissed with costs.

Mitter, J.

If I were at liberty to decide this case according to my own view of the law, I should have held that the suit is not barred by limitation. The plaintiff does not derive his title from his mother, nor am I prepared to say that the title on which the present suit is brought is the same as that on which his mother succeeded to the property in question. But as this point has been decided otherwise by the Full Bench decision referred to by my learned colleague, and as I feel myself bound by that decision, I must dismiss this appeal with costs.