

(1869) 04 CAL CK 0030

Calcutta High Court

Case No: Special Appeal No. 2947 of 1868

Nitta Kolita and Others

APPELLANT

Vs

Bishnuram Kolita

RESPONDENT

Date of Decision: April 16, 1869

Judgement

Norman, J.

Plaintiffs sue for declaration of their right and registration of their name, as owners of a piece of land. The facts are that Banu Kolita, having obtained a decree against Brihaspati, whose heirs the now plaintiffs are attached the land in dispute in execution of the decree. The defendant, Bishnuram Kolita, put in a claim, alleging that he had purchased the land from Brihaspati, and was in possession, and upon that, an order was made, under section 246, releasing the land to the now defendant. The Judicial Commissioner considers that, that order was an order made against Brihaspati, and that Brihaspati and his heirs were bound to bring the suit within one year from the date of that order. This appears to be a mistake. That order was not between Brihaspati and the defendant, but it was between the decree-holder and the defendant, and Brihaspati's right cannot be directly affected by that adjudication. The heirs of Brihaspati are at liberty to bring their suit within the ordinary period of limitation. The section 246 does not apply, so as to limit the plaintiffs' right of suit to the period of one year. It certainly does not appear to us that plaintiffs have any title to the property; because the production of the conveyance from Brihaspati and the assertion of title by the defendant as purchaser from Brihaspati in that suit, lead almost irresistibly to the inference that the defendant was either a bona fide purchaser from Brihaspati, who could not deny his title or purchase-deed, or that the purchase-deed was a fraudulent contrivance concocted between Brihaspati and the defendant, for the purpose of defrauding the creditors of Brihaspati. In this latter case, the heirs of Brihaspati would be precluded from suing to set aside the conveyance. However that may be, the question between these parties is not one that can be determined upon the issue of limitation, but must be tried by the Judicial Commissioner with reference to the merits of the case.

The appellant's costs in this appeal will abide the result.