

(1881) 04 CAL CK 0028

Calcutta High Court

Case No: None

Kritartha Moyi Dossee

APPELLANT

Vs

Obhoy Churn Nundi
and Others

RESPONDENT

Date of Decision: April 5, 1881

Acts Referred:

- Limitation Act, 1963 - Section 14, 22

Citation: (1881) ILR (Cal) 284

Hon'ble Judges: Pontifex, J; Field, J

Bench: Division Bench

Judgement

Pontifex, J.

In this case the defendants are the appellants on the second appeal to this Court. It appears that, on the 24th November 1864, the defendants had, at a Sheriff's sale, purchased property, in which the plaintiff had an interest, and had taken possession thereof. After the expiration of twelve years all but one day, the plaintiff instituted this suit in the Subordinate Judge's Court for the recovery of her property, valuing the suit at Rs. 1,001; at the same time she brought another suit, in the same Court, for another property purchased at the same sale by the Sheriff, by another purchaser. After this case had been in the Subordinate Judge's Court for about seven months, he came to the conclusion that the suit was overvalued, and therefore returned the plaint that it might be filed in the Munsif's Court, which was done on that very day. In special appeal it is contended, that the time during which the suit was pending in the Subordinate Judge's Court ought not to be allowed to the plaintiff; and that, if disallowed, her claim is barred by limitation. We agree with the lower Court that the present case is covered by the 14th section of the Limitation Act, there being no reason to suppose that the plaintiff was not acting bond fide in instituting her suit in the Court of the Subordinate Judges; therefore, as against the defendants, whom she made defendants on the 24th November 1864, the plaintiff

will be entitled to a decree, but as against the other defendants, added after the 24th November 1864, she will not be entitled to a decree; for although Act XV of 1877 had not come into operation when the suit was instituted, yet the law embodied in Section 22 of that Act was applicable to a case like the present even before that Act was passed,---namely, that after the institution of a suit like the present for the recovery of land held by several persons against one of such persons, if a new defendant is added, the suit should, as regards him, be deemed to have been instituted when he was so made a party. We think, therefore, that, in this respect, the decree of the District Judge was wrong, and the plaintiff's suit must be dismissed against all the defendants added after the institution of the suit. But it has also been urged before us on behalf of the appellants, that it has not been shown that the plaintiff was in possession of the disputed property within twelve years before the date of institution of the suit. The Munsif has held that the plaintiff has failed to show that she was in possession within twelve years. But as another suit had already been decided arising out of similar circumstances in the Subordinate Judge's Court, and as both these cases came before Mr. Grant at the same time, and as we find, in his judgment in this case, Mr. Grant said, that this appeal would have been disposed of in the same way as the other appeal decided by him, but that as a special appeal in the other case was filed in the High Court, this case was, at the instance of the parties, kept in abeyance till the disposal of that special appeal,--it is evident to us that Mr. Grant decided this question, which is a question of fact, in favour of the plaintiff. We, therefore, think that the appellants cannot set up this objection.

2. We accordingly allow the appeal so far as regards the defendants who were made defendants after the 24th November 1864, and dismiss the suit as against them; and disallow the appeal, and affirm the judgment of the lower Court, as against Obhoy Churn Nundi and Issur Chunder Pal, who were made defendants on the 23rd November 1864. There will be no costs in this appeal, as the appellants partly fail and partly succeed.