

Ukha Vs. Daga and anr.

Ukha Vs. Daga and anr.

SooperKanoon Citation : sooperkanoon.com/329327

Court : Mumbai

Decided On : Mar-28-1882

Reported in : (1883)ILR7Bom182

Judge : Melvill and ;Nanabhai Haridas, JJ.

Appellant : Ukha

Respondent : Daga and anr.

Judgement :

Melvill, J.

1. We are of opinion that the present suit is barred by section. 43 of Act X of 1877. In 1861 the present plaintiffs sued the present defendants for a partition of certain debts due to the family. In their plaint they alleged that all the family property, with the exception of the debts, had already been divided. The suit was compromise and withdrawn, but without the permission of the Court. The present suit is brought for a partition of certain lands which are alleged to have been left for subsequent division at the time of the former partition. If this allegation be true, the plaintiffs were bound in their former suit to demand a partition of the whole property which remained undivided,--that is, of the lands as well as the debts; and having intentionally omitted to do this, they are barred from bringing the present suit by the provisions of Section 7 of Act VIII of 1859 equally with those of Section 43 of Act X of 1877.

2. For these reasons we reverse the decrees of the Courts below and reject the claim with costs on the plaintiffs throughout.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com