

Nanak and ors. Vs. Sibba and ors.

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SooperKanoon Citation : sooperkanoon.com/458997

Court : Allahabad

Decided On : May-07-1909

Reported in : 3Ind.Cas.536

Judge : Banerji and ;Tudball, JJ.

Appellant : Nanak and ors.

Respondent : Sibba and ors.

Judgement :

1. The question in this appeal is whether the claim is barred by the law of limitation. The property in dispute belonged to one Khazano, who died in 1891. He was succeeded by his mother Musammat Nauli, who continued in possession till her death. The plaintiffs claimed to be the reversioners to the estate of Khazano after Nauli's death and sued to recover possession. They alleged in their plaint that after the death of Nauli, Jit was the person entitled to possession but he took no steps to take it. This has been found to be untrue as Jit had predeceased Musammat Nauli. The plaintiffs next alleged that Musammat Nauli died in the end of December, 1895. They brought their suit on the 23rd December, 1907. The Court of first instance found that Nauli had died on the 25th of October, 1895, and as the suit had been brought after 12 years from that date, it held that under article 141 of Schedule II of the Limitation Act, 1877, the claim was time-barred. The suit was accordingly dismissed. On appeal' the learned Judge, by what seems to us to be a curious process of reasoning, came to the conclusion that the claim was not

time-barred. The lower appellate Court found in concurrence with the Court of first instance that Musammat Nauli died on the 25th of October, 1895. It was not the plaintiffs' case that after her death they had obtained possession and were subsequently dispossessed. On the 24th of December, 1895, Musammat Dharmo, from whom the principal defendants derive title, applied to the Revenue Court for mutation of names and stated at the time that she was in possession. The mutation proceedings remained pending till the 24th of February, 1896, but it was found that she had taken possession after Nauli's death and had continued in possession. This, therefore, is a case to which article 141 of Schedule II clearly applies. The suit is one by a Hindu reversioner entitled to possession of immovable property on the death of a Hindu female. The period of limitation prescribed for it is 12 years, to be computed from the date of the female's death. It was held by the Privy Council in *Bijoy Gopal Mukerji v. Srimati Krishna Mahishi Debi* 34 C. 329 (P.C.) : 9 Bom. L.R. 602 : 11 C.W.N. 424. : 5 C.L.J. 334 : 2 M.L.T. 133 : 17 M.L.J. 154 : 4 A. L. J. 329 that article 141 governs a case like this. As the suit was brought after 12 years from the date of the death of Musammat Nauli, the claim was clearly time-barred. We allow the appeal and setting aside the order of the Court below restore the decree of the Court of first instance with costs in all Courts.