

Kallu Shah and ors. Vs. Mohammad Ehsanullah and ors.

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SooperKanoon Citation : sooperkanoon.com/485046

Court : Allahabad

Decided On : Jan-17-1929

Reported in : 115Ind.Cas.629

Judge : Dalal, J.

Appellant : Kallu Shah and ors.

Respondent : Mohammad Ehsanullah and ors.

Judgement :

Dalal, J.

1. The plaintiffs sued for a declaration that they were the owners in possession of 175 sehams out of 600 sehams in a certain zemindari property. The trial Court held that the plaintiffs were owners of 121 sehams of which the plaintiffs Nos. 1 to 6 owned 67 and the plaintiffs Nos. 7 to 12 54 The suit of the plaintiffs Nos. 7 to 12 was decreed. The suit of the plaintiffs Nos. 1 to 6 was dismissed on the ground that a suit for declaration was time-barred under Article 180 of the Limitation Act, because on the 22nd of October, 1895 a Settlement Officer's Court held that these plaintiffs were not entitled to the share claimed by them. These plaintiffs thereupon appealed to the District Judge and on failure they have come here in second appeal. The law on the subject has been clearly stated in several Bench rulings of this Court, particularly in the case of Akbar Khan v. Turaban 1 Ind. Cas. 557 : 5 A.L.J. 737 : 31 A. 9 : A.W.N. (1908) 252 : 4 M.L.T. 444. There is a Single Judge

ruling in Sheopher Singh v. Deo Narayan Singh 17 Ind. Cas. 675 : 10 A.L.J. 413 in which the law on the subject has been explained with care by Chamier, J. I was also referred by the appellants' Counsel to the cases of Rahmatullah v. Shams-uddin 21 Ind. Cas. 609 : 11 A.L.J. 377 and Allah Jilai v. Umrao Hussain 24 Ind. Cas. 535 : 36 A. 492 : 13 A.L.J. 810. All these rulings agree in holding that a suit for declaration must be brought within six years of the cause of action unless there has been a fresh invasion of the plaintiff's right giving him a fresh cause of action in the present case there was the main cause of action on 22nd October, 1896, and a suit for declaration is clearly barred counting limitation from that date. It was alleged in the plaint that the cause of action arose on 28th January, 1926, the date on which the defendants made a denial of the plaintiffs' right. All these paras 8, 9 and 10 of the plaint relating to this cause of action were denied in the written statement. There is no evidence whatsoever that any such cause of action accrued to the plaintiffs. Obviously the cause of action has been invented in order to overcome the bar of limitation. It was argued that in the written statement the defendants denied the title of the plaintiffs Nos. 1 to 6 and thereby a pause of action arose. This Court, however, is not concerned with a cause of action arising subsequent to the filing of the suit. I hold that there was no fresh cause of action or fresh invasion of the plaintiffs' right subsequent to 1896 so as to afford to the plaintiffs Nos. 1 to 6 a fresh period of limitation. This appeal is dismissed with costs.