

Heet Narain and ors. Vs. Gya Persad, Alias Lal Persad, and anr.

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SooperKanoon Citation : sooperkanoon.com/868182

Court : Kolkata

Decided On : Jun-17-1882

Reported in : (1883)ILR9Cal93

Judge : Prinsep and ;Bose, JJ.

Appellant : Heet Narain and ors.

Respondent : Gya Persad, Alias Lal Persad, and anr.

Judgement :

Prinsep, J.

1. The sole point for our decision in this case is whether the suit is barred by limitation. The plaintiffs sued to recover certain property as having been bought in the name of Mussamut Lakho by Ram Narain Sahoo, and that, on the death of Lakho, they are entitled to succeed as her heirs. It appears that this property is now held by the heirs of Bhoop Narain Sahoo, who is a relative of both the plaintiffs and of Ram Narain, but subordinate as regards rights of inheritance to the plaintiff's. In April 1859, one Sheo Golam Bhagut obtained a decree against Bhoop Narain, in execution of which, in 1862, he sold the properties now in suit, Sheo Golam being himself the purchaser. He then sold his rights to one Sheo Narain Sahoo, who again, in July 1863, sold to Mussamut Lakho.

2. In November 1865, Lakho applied to execute this decree and got possession of this property; but nothing resulted from this application, for, on the following June, it was struck off for default. In November 1870 Lakho died, and the present suit has been brought on the 9th of April 1876,--that is to say, nearly fifteen years from the date of original purchase.

3. It is contended by the defendants, appellants, that, inasmuch as neither Lakho, nor her husband Ram Narain, has, at any time, been in possession of this property, and as more than twelve years have passed since their right accrued, during which the previous proprietor Bhoop Narain and his sons have held possession, the present suit is barred. On the other hand, it is argued on behalf of the plaintiff's, that limitation would commence to run only from the death of Lakho Koer,--that is to say, from November 1870. The rule which has been followed by this Court seems to be that a title by adverse possession for more than twelve years accrues even during the lifetime of a Hindu widow, but if possession arises directly from any invalid alienation on her part, special provision is made for the right to sue on the part of the reversioners, within twelve years from her death and the accrual of their title. Under such circumstances we think that the plaintiff 's claim is barred by limitation; but with regard to the houses 3 and 6, the suit is, on the defendants' own statement, not so barred; because they admit that she entered upon possession of these houses and made them over to the ancestors of the defendants as her reversionary heirs. Under such circumstances limitation would commence to run as against the plaintiff 's only at her death. As regards these two houses, therefore, the order of the lower Appellate Court will be maintained; in other respects the order will be set aside. The plaintiff 's will get possession of two-thirds of those two houses, Nos. 3 and 6. Costs in proportion.