

# CALCUTTA HIGH COURT

Eshan Chunder Roy

Vs

Monmohini Dassi

(White and Mitter ,JJ.)

22.11.1878

## JUDGMENT

### **Mitter, J.**

1. The plaintiff in this case seeks to recover possession of a share in a certain taluk, and to establish her right of worshipping two idols mentioned in the plaint. The taluk and the right of worshipping the idols are claimed by the plaintiff as heir of her husband. As regards one of the idols she claims the right of exclusive worship, and as regards the other, only during one-sixth of the year.
2. The defendants pleaded limitation to the whole claim, and, upon the merits, alleged that under a will executed by her husband, the plaintiff by her conduct has forfeited her rights.
3. The Court of first instance overruling both these objections decreed the claim in full. On appeal the District Judge has upheld the judgment, except as regards the idol Shalgram Deo, the idol which the plaintiff claimed to worship exclusively.
4. The defendants have preferred this appeal, and contend that the lower Courts have misconstrued the terms of the will, and that the plaintiff's claim regarding the other idol (Sri-Sri Sham Roy) is also barred by limitation.
5. I do not think that the objections are tenable. It seems to me that the Courts below have put a right construction upon the terms of the will executed by the husband of the plaintiff.
6. As regards the question of limitation raised by the defendants, special appellants, I am also of opinion that the decision of the lower Courts is correct. The plaintiff's claim, so far as the right of worship of the idol Sri-Sri Sham Roy is concerned, is clearly brought within the purview of Article 131 of the Limitation Act of 1871.

7. The plaintiff has taken an objection before us against that part of the decision of the lower Appellate Court, which has gone against her. It has been argued that the claim, regarding the worship of the idol Shalgram, has been erroneously held as barred by limitation. The present suit is admittedly brought more than six years after the accrual of the cause of action, and unless the right in question is in the nature of an interest in immoveable property, the plea of limitation cannot be got over. After giving to the matter our best consideration, we are unable to come to the conclusion that the right of worshipping an idol is in the nature of "an interest in immoveable property." The plaintiff's objection to the decision of the lower Appellate Court must, therefore, also fail.

8. As the plaintiff and the defendants have both failed in this Court, we think there should be no order for costs in this special appeal.