

CALCUTTA HIGH COURT

Raghoo Pandey

Vs

Kassy Parey

(Mitter and Tottenham, JJ.)

15.08.1883

JUDGMENT

Mitter, J.

1. This is suit for redemption of certain share of Brit Jugmanka. It is a right of officiate as priest at funeral ceremonies of Hindus. The Munsif awarded a decree in favour of the (plaintiffs) appellants. The lower Appellate Court has reversed that decree, holding that under Article 145+ of the present Limitation Act (No. XV of 1877), the claim is barred. It is of opinion that the right claimed is in the nature of moveable property.

2. It is contended in appeal that the right claimed is in the nature of immoveable property, and therefore the present suit falls under Article 148,++ and not under 145.

3. There is no doubt that the right in question ranks amongst immoveable property according to Hindu law. We need not here refer to the texts of the Hindu law bearing upon this question, as they are all collected in the two judgments of the Bombay High Court cited below, one of which was cited before us in the course of the argument, *Krishnabhat bin Husgange v. Kapabhat bin Mahalbhat*¹ and *Balvantrav v. Purshotram Sideshvar*²

4. In *Futtehsangji Jaswantsangji v. Desai Kallian Sangji Hukoomut Raiji*³ the Judicial Committee of the Privy Council, after referring to the rule of construction adopted by the Bombay High Court in the two cases cited above, observe (p. 50): "To the application of this rule within proper limits, their Lordships see no objection. The question must, in every case, be whether the subject of the suit is in the nature of immoveable property or of an interest in immoveable property; and if its nature and quality can be only determined by Hindu law and usage, the Hindu law may properly be invoked for that purpose."

5. In this case "the nature and quality" of the property in suit can be only determined by Hindu law, because it is not recognized as property in any other system of law.

6. Adopting this principle of construction, therefore, we must come to the conclusion that the present suit falls under Article 148 and not under 145.

7. We reverse the decision of the lower Appellate Court, and remand the case to that Court for the determination of the other question arising in it. Costs to abide the result.

+ [Article 145:

Description of suit.	Period of limitation.	Time from which period Begins to run.
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Against a depository or pawnee to Recover moveable property deposited Or pawned.	Thirty years....	The date of the deposit or pawan.]
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++ [Article 148.-

Against a mortgagee to redeem or To recover possession of immoveable	Sixty years....	When the right to redeem or to recover possession accrues.
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Property mortgaged.

Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, which have been executed before the first day of May 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.

Cases Referred.

16 Bom. H.C. A.C. 137

29 Bom. H.C. 99

3L.R. 1 I.A. 34 : 13 B.L.R. 254