

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gungagovind Mundul and others v. Bhoopal Chunder Biswas, from the High Court of Judicature at Fort William in Bengal; delivered 28th November 1872.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

THE Appellants in this case, the Munduls, were the Defendants in the suit below. The Respondent, Bhoopal Chunder Biswas, was the Plaintiff. The suit was brought to recover possession of a two anna share of a moiety of the estate left by the late Hurnarain Mundul. The Defendants in answer to the Plaintiff's suit set up the plea of limitation. The Court of first instance, as well as the High Court, held that the suit was not barred, and hence the present Appeal.

The Plaintiff in his plaint stated, " that of the  
" estate left by the late Hurnarain Mundul,  
" Ramonee Dossee, widow of his son Digambur  
" Mundul, became the rightful owner of, and en-  
" titled to, a moiety, and Shumbhoo Chander  
" Haldar, father of Protap Chunder Haldar his  
" daughter's son, to the remaining moiety." That was the moiety which had belonged to Digambur's brother, Rajkrishno Mundul. He then states, " On the 27th Maugh 1252 B.S. the  
" said Haldar conveyed to your Petitioner by gift  
" two annas out of his eight annas share, and

“ gave him in writing a deed of gift duly registered.” It was stated in the deed of gift that whenever any of the real and personal properties of the said estate, which were in the possession and hands of Pearylall Mundul and others, should come to hand, whether by possession taken personally, or by amicable settlement, or by suit in Court, the Plaintiff should get a two annas share, Nobin Seekaree a one anna share, and Shumbhoo five annas, out of the eight annas share thereof, and that whatever expenses should be incurred by suit in Court in respect of any claim to any of the properties, or in recovering possession of any of the properties, the same should be defrayed by the Plaintiff and Shumbhoo in the ratio of the aforesaid shares; that if any amicable settlement should be made regarding any property, the Plaintiff and Shumbhoo should do the same with the consent of all; that if there should be occasion to institute any suit in Shumbhoo’s sole name, or in the joint names of him and Ramonee Dassee as Plaintiffs for any property, the Plaintiff should pay the expenses thereof according to the aforesaid shares; and that after decree Shumbhoo and the Plaintiff should get the property with mesne profits and interest according to their shares. Shumbhoo within the period of limitation commenced a suit against the Munduls, No. 76 of 1854, for the whole of Hurnarain’s estate, but pending that suit Joykristo was substituted as the Plaintiff under a deed of sale from Shumbhoo to him. It was said that Joykristo held benamee for the Munduls, but whether he did so or not is not material. Joykristo proceeded with the suit commenced by Shumbhoo, and obtained a decree for an eight annas share of the estate. Ramonee was a Defendant in the suit against the Munduls. She appealed against that portion of the decree which affected her. The High Court modified the decree against her by limiting it to a five annas share. The Munduls not having appealed, the decree remained binding upon them for the

eight annas share. Joykristo executed the decree under which a five annas share was delivered to him in the manner in which delivery is made under executions of decrees for land in the possession of ryots, viz., by beat of drum and the affixing of bamboos, and he filed a receipt for the same in the Court of the Principal Sudder Ameen. The decree and execution put an end altogether to limitation. It is immaterial whether Joykristo obtained actual possession or not. In the suit No. 79 of 1861, the Plaintiff's title under the deed of gift from Shumbhoo was established against Joykristo. Joykristo afterwards sold to the Munduls the five annas share of which he had obtained possession under the execution, and all his right, title, and interest under the decree. Neither the Munduls who purchased from Joykristo, nor Joykristo who purchased from Shumbhoo, could have any better title than Shumbhoo himself. According to the deed of gift the Plaintiff was entitled to a two annas share of all the property which should come to hand. A five annas share came to hand under the execution, and the Munduls retained possession of the other three annas included in the decree under the deed of sale from Joykristo. The Munduls being in possession of that three annas share, the Plaintiff was entitled to two annas of the property of which Joykristo obtained possession under the execution. The Munduls having obtained possession of that two annas share, the Plaintiff is entitled to recover it from them. They obtained that possession after the execution of the decree and within the period of limitation.

It appears then that the Munduls got possession of the two annas share of which Joykristo ought to have remained in possession in trust for the Plaintiff. The Plaintiff therefore has a right to say,—“these two annas belong to me. You, the Munduls, are in possession of my two annas share, and I bring an action against you to recover that share.” Then, when was it that this cause of action arose?

Why, it accrued, at any rate, at a period subsequent to the execution of the decree by Joykristo. That was within the period of limitation.

The High Court certainly do say, "The present suit is brought to carry into execution the decree in that suit," speaking of Joykristo's suit "in which the Plaintiff has an interest." Their Lordships do not understand that the High Court in using the words "to carry into execution," meant "to get the decree executed by process of execution according to law," but merely that the present suit is brought to give effect to that decree.

It appears to their Lordships that the suit is not barred, inasmuch as the Defendants have obtained that possession which is wrongful as against the Plaintiff subsequently to the execution of the decree by Joykristo.

Without, therefore, entering into the reasons of the High Court, their Lordships are of opinion that the decision to which they came was the correct one, and they will therefore humbly advise Her Majesty that the decree of the High Court be affirmed, with costs.