

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Sri Ishwar Shyam Chand Jiu and others v. Ram Kanai Ghose and others, from the High Court of Judicature at Fort William in Bengal; delivered the 28th February 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD MERSEY.

LORD ROBSON.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

This Appeal was heard *ex parte*.

This Suit was brought by the Raja of Panchakote as Shebait of some Thakurs or family idols to recover possession of a mouza alleged to be debottar and dedicated to the service of the idols. It had been alienated more than twelve years before the institution of the Suit by the Plaintiff's predecessor in title who granted a Mokurreri lease of the property in consideration of a fixed rent and the payment of a fine equal to the amount of two years' rent.

The defence was twofold : (1) that the property was not really debottar ; and (2) that the Suit was barred by Article 134 of the Limitation Act.

The Subordinate Judge of Manblhum decided both points in favour of the Plaintiff.

The case was heard twice on appeal by the High Court. On the first hearing the learned Judges came to the conclusion that there was not sufficient evidence to prove that the property

was really debottar. They dismissed the Suit on that ground, saying that it was not necessary to discuss the question of limitation. The Appeal was heard again on Review upon the discovery of new and important evidence. On that occasion the learned Judges held that Article 134 was a bar to the Suit, and that it was not necessary therefore to consider the further evidence offered as to the character of the property.

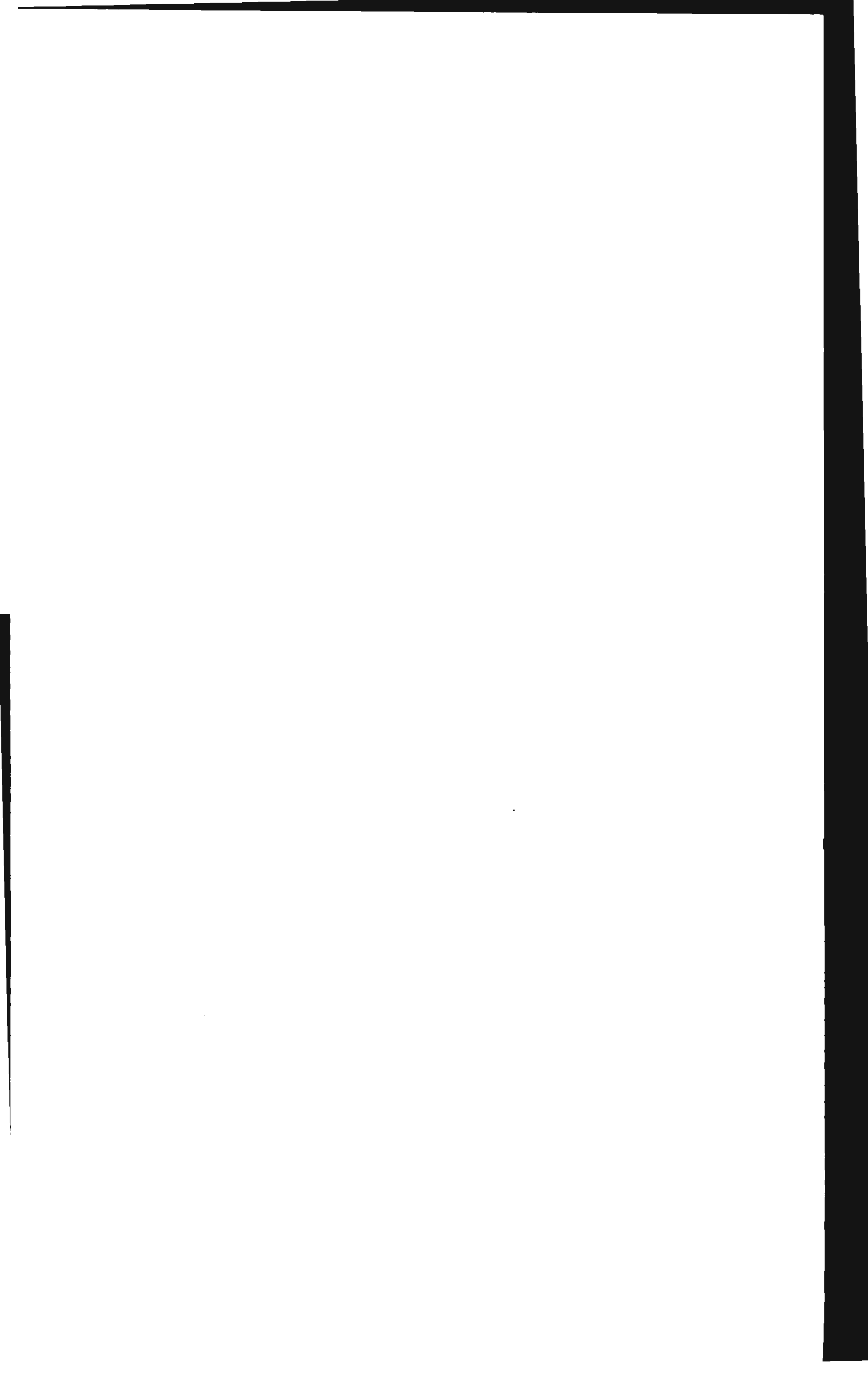
On considering the additional evidence brought before the High Court on Review, their Lordships are satisfied that the property was really debottar.

The only question remaining depends on the law of limitation.

On this point attention has been called to the case of Abhiram Goswani v. Shyama Charan Nandi decided by this Board in July 1909 and reported in XXXVI I.A. 138. It is impossible to distinguish that case from the present.

Whatever might have been the inclination of their opinion if the matter had been *res integra* it seems to their Lordships that they would not be justified in reviewing on an *ex parte* application the considered judgment of the Board delivered after full argument. They will, therefore, simply follow the decision in Abhiram Goswani v. Shyama Charan Nandi. They do so with the less hesitation because the language of the Article under discussion in that case and in this has been altered by subsequent legislation.

Their Lordships will, therefore, humbly advise His Majesty that the Appeal ought to be allowed. There will be no order as to costs either of the hearing of the Suit in the Courts below or of this Appeal, except that the Respondents must repay to the Appellants the costs paid under the Decree of the High Court.



In the Privy Council.

SRI SRI ISHWAR SHYAM CHAND JIU
AND OTHERS

v.

RAM KANAI GHOSE AND OTHERS

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