

(1909) 07 CAL CK 0014
In the Calcutta High Court

Ahmedullah Bhuiya and Others

APPELLANT

Vs

Kaminuddin Patwari and Others

RESPONDENT

Date of Decision : 14-07-1909

Acts Referred:

Citation : (1909) 07 CAL CK 0014

Judgement

1. These ten appeals arise out of as many suits by the plaintiff as ijaradars to recover from the several defendants rent for the years 1308 to 1311 B.S. inclusive. The ijara was granted to the plaintiffs' predecessor Aminuddin Bhumya in 1310, and continued an assignment in his favour by the landlord Ahmad Ghazi Chowdhury of the rents then already due, for 1303 and 1309 and remaining unpaid. It is conceded that the rents fall due in the Bengali month of Magh. The 31st chaitra 1308 was equivalent to 13th April 1902. The suits were filed on 15th April 1905, the 13th and 14th being Court holidays. The sole question in these appeals is whether the claim for the rent of the Bengali year 1308 is barred by limitation. If Article 110 of schedule II to the Limitation Act, 1877, governs the case the suits are time-barred; if the special limitation prescribed by Section 184 and Article 2 (b) of the schedule III of the Bengal Tenancy Act is applicable, the suits are within time. Both the Courts below have concurred in holding that the claims in respect of the year 1308 are time-barred, and we think that this view is correct. Though the effect of the ijara was to put the ijaradar in the position of landlord to these tenants that could only be with regard to future rent. So far as the past rent was concerned, it could only operate as an assignment of the debt due. It was held by a Full Bench of this Court in *Siris Chandra Bose v. Nasim Quazi* 4 C.W.N. 357 that rent does not lose its character as such merely by an assignment of it by the landlord to a third party, the earlier ruling to the same effect in *Sheikh Munsar v. Loke Nath Roy* 4 C.W.N. 70 being approved and followed. Accepting this view the question then arises whether a suit by the assignee to recover such arrears falls within Article 2 (6) of schedule III to the Bengal Tenancy Act as it stood before the amendment of 1907. It has been held by a Division Bench of this Court that it does not. See *Mohendra Nath*

Kalamoree v. Koilash Chandra Dogra 4 C.W.N. 605. In that case also the view expressed by the Full Bench was adopted, but the learned Judges were of opinion that, inasmuch as the Act is an Act relating to the land of landlord and tenant in Bengali, all-its provisions, including the schedules must apply only to suits in which the parties stand in the relation of landlord and tenant. They held, therefore, that the plaintiff in that case could" not take advantage of the longer period of limitation allowed by Article 2 (b). The plaintiffs here are in the same position, at least as regards the back rents, which had accrued due before the grant of their ijara. Following that ruling (which we are bound to do, unless we referred the point to a Full Bench) we hold that the claim for the rents for 1308 is barred by time. It may be noted that, if the suit were governed by the article, as it at present stands, there would be no room for doubt, as it is now confined to suits by a sole landlord; the entire body of landlords; or one or more co-sharer landlords.

2. For these reasons we think the appeals fails--and they are, accordingly, dismissed with costs.