

(1887) 06 CAL CK 0006
In the Calcutta High Court

Altaf Hosain

APPELLANT

Vs

Basarut Ali and Others

RESPONDENT

Date of Decision : 29-06-1887

Acts Referred:

Citation : (1887) ILR (Cal) 624

Hon'ble Judges : Tottenham, J; Norris, J

Bench : Division Bench

Judgement

1. The only point taken in this second appeal is that the plaintiff's suit, which is one to recover land of which he had been dispossessed by the defendant, his landlord, is barred by limitation as not having been brought within one from the date year of dispossession.
2. According to the plaintiff's case, as stated in the plaint, the suit was brought within one year from the date of dispossession. According to the defendant's case, dispossession took place some two years before the suit was brought.
3. The Courts below, however, found it immaterial to decide which date of dispossession was correct, because they held that, as this was a suit to establish plaintiff's title to recover possession of land, the limitation would be 12 years and not one year. This question was decided only by the first Court. The lower appellate Court was silent in respect of that issue. We must conclude that the point was abandoned because the defendant-appellant must have acquiesced in the judgment of the first Court that, the suit being one for title, one year's limitation would not apply.
4. We are asked in this appeal to hold that one year's limitation does apply to the case, and that the suit should be sent back for a clear finding as to the date when the cause of action accrued.
5. In support of this contention we have been referred to a decision of this Court in Srinath Bhattacharji v. Ram Ratan De 12 C. 606 and to a recent decision by the Chief Justice and Mr. Justice Cunningham in second appeal No. 1215 of 1886.

The reported case held that, although the plaintiff might ask for a declaration of title, still one year's limitation, u/s 27 of the Rent Act of 1869, would apply where the existence of the tenure is not disputed and the plaintiff's original title, as tenant, had not been questioned, and where there is no question of title raised in the suit or raised before the suit, except whether on the one hand the plaintiff has been dispossessed by force, or, on the other hand, his tenure has come to an end by his having relinquished it. The Court held that the suit was not a suit to try title within the meaning of the rule referred to.

6. In the present case, however, we find that the defendant from the commencement denied that the plaintiff had any title whatever. Of the 10 bighas claimed, he only admitted that, during one year or for two years, the Court to decide that; question of title in his favour. We think, therefore, that this case differs from the case of *Srinath Bhattcharji v. Ram Ratan De* 12 C. 606 and that there being a bona fide question of title, the suit was maintainable within 12 years from the date of the cause of action.

7. The appeal is dismissed with costs.