

(1925) 06 CAL CK 0095
In the Calcutta High Court

Ananda Chandra Kacharu

APPELLANT

Vs

Barada Kanta Dey and Others

RESPONDENT

Date of Decision : 24-06-1925

Acts Referred:

Citation : AIR 1926 Cal 177 : 90 Ind. Cas. 509

Hon'ble Judges : Mukerji, J; Hugh Walmsley, J

Bench : Division Bench

Judgement

Hugh Walmsley, J.—This appeal is preferred by the plaintiff. He brought a cargo of oranges to the Madaripore Bazar where there was a quarrel between him and the ijaradar of the market about the payment of tolls. In consequence, the ijaradar informed the Police and the result was that the boat of oranges was detained at the thana for some days and, while so detained, the oranges deteriorated. The plaintiff brought the suit for compensation on account of the oranges so damaged. The learned Munsif found that the plaintiff was entitled to a sum of Rs. 143 odd and gave the plaintiff a decree for Rs. 68-13-6 against certain of the defendants who had not compromised the case with the plaintiff as the defendant No. 2 had done. These defendants then preferred an appeal to the District Court and the learned Judge of the Court of Appeal below held that the suit was barred by limitation. The suit was brought exactly three years after the date on which the boat was taken to the thana and the learned Subordinate Judge's view was that the appropriate Article of the Limitation Act applicable to the case was Article 36 and not Article 49 as held by the First Court.. If the learned Judge was right in this view, then undoubtedly the suit was barred by limitation. On behalf of the plaintiff appellant, it is urged that Article 49 is really the Article applicable to the present case, and, in this connection, our attention has been drawn to the decision of a Pull Bench of this Court in the case of Mangun Jha v. Dolhin Golab Koer 25 C. 692 : 2 C.W.N. 265 : 13 Ind. Dec. 454 (F.B.). It appears to me that the case does not really assist us much here. In the present instance, I think, we must go by the words of the Articles and consider which of those Articles does apply to the facts of the case. Clearly, the plaintiff

did not bring the suit to recover any specific moveable property. He did not claim compensation against the defendants for having wrongfully taken any moveable property because the finding is that it was the Police who took the cargo of oranges to the thana. It was not a case for compensation for injuring the oranges or for compensation for wrongfully detaining the oranges because here again the finding is that it was the Police who kept the boat at the thana. It appears to me, therefore, that the substance of the claim cannot be brought within the purview of the words of Article 49. In my judgment, Article 36 is the appropriate Article applicable to the case. That being so, it must be held that the suit is barred by limitation. The result, therefore, is that the appeal is dismissed with costs.

Mukerji, J.

2. I agree.