

**(1947) 06 CAL CK 0017**  
**In the Calcutta High Court**

**Case No : Appeal from Appellate Decree No. 673 of 1943**

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| Anil Kumar Ray Choudhury and Others    | APPELLANT  |
| Vs                                     |            |
| Promatha Nath Roy Chaudhury and Others | RESPONDENT |

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**Date of Decision :** 05-06-1947

**Acts Referred:**

**Citation :** (1947) 06 CAL CK 0017

**Final Decision :** Dismissed

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### Judgement

Sharpe, J.—This appeal is by the Tenant-Defendants and arises out of a suit for assessment of rent and recovery of arrears of rent at the rate assessed for the years 1340 to 1343 Aswin. The tenancy pertains to Tauzis Nos. 45 and 46 of the Mymensingh Collectorate and Plaintiff is admittedly the owner of Touzi No. 46 and entitled to a 7 anna 10 gandas share of the total rent. The Mousa in which the tenancy is situated was formerly in the Pabna District but was transferred to Mymensingh by a Notification published in the Calcutta Gazette in August, 1926. Despite this, however, the suit was filed originally on 13th January, 1937, in the Court of the Munsif at Serajganj and an ex parte decree obtained. That decree was set aside at the instance of the Defendants and an order passed on 19th March, 1941, directing the decree to be returned. It was, however, taken back on 3rd April, 1941, and filed in the Court of the Munsif at Tangail on 4th April 1941. The land of the tenancy was admittedly under water both before and after the last C.S. Operations, and in the Khaitan which was then prepared it was noted that no rent had been assessed. Plaintiff alleged that the land re-appeared in 1338 B.S. and hence the suit for assessment of rent which he claimed should be at the prevailing rate of Rs. 1-4 per pakhi. Defendants denied that the Plaintiff was their landlord; they also alleged that the, rate claimed was excessive and that the suit was barred by limitation. A further plea was that the suit for assessment of rent and recovery of arrears of rent was not maintainable. All these points, except the rate of rent which was fixed at Re. 1 per pakhi, were decided against them by the trial Court, as well as by the learned Additional District Judge in appeal.

2. The only two points which have been argued in this appeal are (1) that the suit was barred by limitation, and (2) that the suit for assessment of rent and recovery of arrears was not maintainable.

3. With regard to the point of limitation it is not disputed that the provisions of sec. 14 of the Limitation Act are attracted since both the Courts below have found that the Plaintiff was prosecuting his suit in the Court of the Munsif at Serajganj with due diligence and in good faith, and is, therefore, entitled to deduct the period from 13th January, 1937 to 19th March, 1941, in computing the period of limitation. It is, however, claimed that the suit is barred by limitation because the Plaintiff is not entitled to deduct the period between 19th March and 3rd April, 1941, i.e., between the dates on which the order for return of the plaint was passed and the date on which return was actually taken from the Court, and consequently that the plaint when filed in the Tangail Court on 4th April, 1941, was barred by this period. The answer of the Plaintiff is that although the suit was filed on 13th January, 1937, the period of limitation for filing the suit was three years from 14th April, 1934, and if the period 13th January, 1937 to 19th March, 1941 be excluded, that three years will not expire until after 4th April, 1941. This is undoubtedly true, but the Appellants contend that this can not be allowed because, if it is, the Plaintiff Respondent will be given credit twice over for the period 13th January, 1937 to 4th April, 1937, first because that period is included in the three years' limitation allowed in the ordinary way and second, because it is included in the period which is to be excluded under sec. 14 of the Limitation Act. I do not think, however, that these contentions can be accepted. Sec 14 of the Limitation Act does not prescribe any period of limitation but provides only for a method of calculation of that period where a suit has been instituted bona fide in a Court without jurisdiction. There is no dispute that in the present case the limitation was that prescribed by Article 2 (b) of Schedule III of the Bengal Tenancy Act, or that the limitation prescribed was three years from the last day of the agricultural year 1340 B.S., i.e., 31st Chaitra, 1340, corresponding to 14th April, 1934. Time began to run from that date and would ordinarily have expired on 14th April, 1937, but the provision of sec. 14 is clear that, in calculating the three years, the period 13th January, 1937 to 19th March, 1941, is to be excluded, and although in the ordinary course the period 13th January, 1937 to 14th April, 1937, would have been included in the three years allowed, when that period is excluded by reason of another provision of the Limitation Act, it cannot in my opinion be said to amount to giving credit for the same period twice over. The real effect of the provisions of sec. 14 are to extend the period of limitation prescribed by the period for which the suit or other proceeding had been prosecuted with due diligence and in good faith in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. It is well established that the effect of sec. 14 is not to render the suit after re-filing in the proper Court a continuation of the original suit, and consequently the period of limitation has to be determined for that suit as if it was a new suit, and the period will be that which was prescribed for the

original suit, but excluding the period during which the suit was being prosecuted bona fide, in a wrong Court. In my opinion, therefore, the suit out of which this appeal has arisen was not barred by limitation and this point fails.

4. The second contention is that a suit for assessment of rent and recovery of arrears of rent is not maintainable, and in support thereof the Appellants rely on the decisions reported in *Bisheshar Singh Vs. Patan Mahton and Others*, and *Jai Narayan Munder and Others Vs. Kuleswar Singh*, which followed *Partap Mahton v. Musstt. Wazirunnissa* ILR 4 Pat. 604 (1925). The view taken in those cases does not, however, seem to accord with the decisions of this Court. In *Gour Sundar Majumdar v. Krishna Kamini Chaudhurani* 55 C.L.J. 74 (1931), it was held by Mr. Justice Guha that "there cannot be any bar to a decree for rent or damages for use and occupation in a suit for assessment of rent, if the fact of possession of the lands in respect of which assessment is prayed has been admitted or proved and if the claim is not barred by limitation." In the present case, it has been held already that the claim is not barred, and it is not disputed that the Appellants were in possession of the lands in respect of which assessment is prayed during the period for which rent is sought to be recovered. The learned Advocate for the Appellants has urged that reliance should not be placed on this decision because the decree then under consideration was not one for recovery of rent but for recovery of damages, and also because the earlier decisions to which reference; was made [*Jagannath Manjhi v. Jumman Ali Putwari* ILR 29 Cal. 247 (1901), *Bhupendra Kumar Chakrabutty v. Surja kanta Rai Chowdhury* 38 C.L.J. 291 (1923) and *Manmatha Pal Chowdhury v. Surendra Nath Bose* 40 C.L.J. 538 (1927)] related to suits for additional rent for increase in area under sec. 52 of the Bengal Tenancy Act. I do not think, however, that in principle there is any substantial difference between a suit for recovery of rent for additional area, which is in effect a suit to recover rent for a portion of a tenancy which has not been assessed, and a suit for recovery of rent for an entire holding which is liable to assessment but for which no rent had previously been assessed. I am not prepared, therefore, to differ from the view expressed by Guha, J., in the decision of *Gour Sundar Majumdar v. Krishna Kamini Chaudhurani* 55 C.L.J. 74 (1931) referred to above or to hold that the suit out of which this appeal arises was not maintainable. The result is that this appeal is dismissed with costs for the Respondent.