
(1923) 05 PAT CK 0018
In the Patna High Court

C.J. Smith

APPELLANT

Vs

A. Kenny, Official Trustee of Bengal

RESPONDENT

Date of Decision : 31-05-1923

Acts Referred:

Limitation Act, 1963 — Article 115

Citation : AIR 1924 Patna 231

Hon'ble Judges : Dawson Miller, C.J.; Foster, J

Bench : Full Bench

Judgement

Dawson Miller, C.J.—The question for determination in these appeals is whether the three years" period of limitation under Article 115 of the Limitation Act applies or whether the six years" period provided either by Article 116 or Article 120 is the proper period. The suit was instituted by the plaintiff on the 11th January, 1919, claiming royalty or commission in respect of certain mining lands in mauza Kasunda of which he holds the proprietary interest. The royalty claimed was from the beginning of 1914 up to the date of the suit.

2. The learned Subordinate Judge before whom the case came for trial decided that the proper Article to apply was Article 115 which provides for:

Compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.

3. From that decision the plaintiff has appealed and contends that the present suit is not one for compensation for breach of an unregistered contract but it is one either for enforcement of the terms of a decree, in which case he contends it is governed by Article 120, or for enforcement of a registered document. The mining rights in mauza Kasunda originally belonged to the Raja of Jharia. The mauza was, before the year 1907, in possession of a tenure-holder, one Kenaram Sircar, who had granted a mining lease to two persons named Ashutosh Rai and Gadadhar Rai. They in turn had granted a sub-lease of the mining rights to the late Mr. J. Chater whose estate is now represented by the defendant in this suit.

In 1907 questions arose as to whether the tenure-holder had any interest in the mining rights of the village and a suit was instituted by the Raja as Zammdar claiming that he alone was entitled to the mining rights on the ground that they had not passed to the tenure-holder under the terms of the instrument granting his interest, and he sought to regain possession of the mining rights and to have the leases set aside. The parties to that suit, in addition to the Raja and Kenaram Sircar, included the original lessees Ashtutosh Rai and Gadadhar Rai and Mr. Chater the sub-lessee from them. That suit was in fact compromised and in the result a decree was passed on the 25th April, 1907, the effect of which was that possession was to remain with the leasees of the tenure-holder and their sub-lessees they continuing to pay the tenure-holder the royalties originally agreed to between them but they were also to pay to the Raja of Jharia an additional royalty. In the case of Mr. Chater he was to pay to the Raja six pies per ton on all steam coal raised and two annas per ton on all hard Coke manufactured out of the coal raised. It appears that from 1914 up to January 1919, when the present suit was instituted, no royalty had been paid to the plaintiff by Mr. Chater's administrators and when the suit was instituted the claim was met by the objection that no more than three years' royalty could be recovered owing decree and the other against the final decree. "They are both dismissed but the respondents will be entitled only to one set of costs.

Foster, J.

4. I agree.