

(1931) 03 CAL CK 0010
In the Calcutta High Court

Fate Chand Bokaria and Others

APPELLANT

Vs

Nagendra Kishore Roy Choudhury and Others

RESPONDENT

Date of Decision : 26-03-1931

Acts Referred:

Citation : AIR 1931 Cal 790

Judgement

1. This appeal has arisen out of a suit for arrears of rent for the years 1329 to 1332 B. S. on the basis of a registered kabuliyat executed by defendant 1. Defendants 2 to 5 are the appellants. They and two minor defendants 6 and 7, were made parties to the suit by the plaintiffs on the allegation that the kabuliyat was executed by defendant 1 on behalf of a firm and at the dissolution of the partnership the property in suit fell to the share of defendants 2 to 7. The suit was dismissed in the Court of first instance, and in the appellate Court it was decreed as against defendant 1 or in the alternative against defendants 2 to 7. Defendants 2 to 5 now appeal on the ground that there is no proof of the relationship of landlord and tenant between them and the plaintiffs and also on the ground that there was no prayer for any relief as against them, the suit originally being one against defendant 1 alone; and in the third place the rent for the year 1329 is barred by limitation. The suit is one under the Transfer of Property Act and the evidence shows that the property in suit was transferred to defendants 2 to 7. It is a transferable tenure and it is clear that the assignees are liable for rent as well as the original lessee. There is therefore no substance in the objection that there is no relationship of landlord and tenant between the plaintiffs and defendants 2 to 7. The point that there was no relief prayed for against defendants 2 to 7 was not taken in the Courts below. It is true that they were made parties under protest, but in the circumstances of the case we think it is not a ground on which we should refuse to decree the plaintiff's claim, since it is admitted that defendants 2 to 7 have been occupying the holding which was vacated by defendant 1 and defendants 2 to 7 must have realized that they are liable to pay the rent for the holding which they have been enjoying. We therefore think that this objection must be disallowed.

2. As regards the third point-the point of limitation-it is suggested that the article of the Limitation Act applicable to the present case is Article 110. But there are authorities for holding that in the case of a registered lease the correct article to apply is Article 116. We may refer, for instance, to the decision in the case of *Tricum Das Cooverji Bhoja v. Gopi Nath Jiu Thakur* AIR 1916 P.C. 182. The rent for the year 1329 is accordingly not barred by limitation-the suit having been brought within six years.

3. The appeal fails and is dismissed with costs.

4. The cross objection has not been pressed and is dismissed without costs.