

(1922) 02 CAL CK 0085
In the Calcutta High Court

Guru Prosanna Roy and Others

APPELLANT

Vs

Ful Chand Mondal and Others

RESPONDENT

Date of Decision : 09-02-1922

Acts Referred:

Limitation Act, 1963 — Section 23, 25

Citation : AIR 1923 Cal 291 : 67 Ind. Cas. 244

Hon'ble Judges : Panton, J;Greaves, J

Bench : Division Bench

Judgement

1. This appeal is preferred against a decision of the District Judge of Birbhum affirming a decision of the Munsif of Bolpur.

2. The suit was one for a declaration of the plaintiffs' right to take water from a tank belonging to the defendants. Both the lower Courts have decreed the suit and the defendants now appeal.

3. On their behalf the main contention is that the suit was barred by limitation by reason of its not having been instituted within two years of the last interruption of the alleged exercise of this right to take water. Now, if the success of the plaintiff's claim had depended only on Section 25 of the Limitation Act there would have been force in this contention. But as the learned District Judge has pointed out, the plaintiffs in their plaint set out an alternate claim based upon a lost grant. The learned Munsif expressly found that it is "quite clear that the plaintiffs are using the water of the tank for irrigation purposes for a long time and from time immemorial." With this finding the learned District Judge evidently concurred. We think, therefore, that there is no force in the contention which is founded on Section 23 of the Limitation Act.

4. The only other point taken is that the question as to whether the water should be taken from the tank by means of two pits should have been remanded for a further decision to the Court of first instance. That, however, was a matter which was within the discretion of the learned District Judge and on a consideration of

the facts we are not prepared to interfere with the exercise of his discretion.

5. The appeal accordingly fails and is dismissed with costs.