

(1870) 01 CAL CK 0012
In the Calcutta High Court
Case No : Special Appeal No. 1587 of 1869

Hardayal Mandal	Vs	APPELLANT
Tirthanand Thakur and Another		RESPONDENT

Date of Decision : 08-01-1870

Acts Referred:

Citation : (1870) 01 CAL CK 0012

Judgement

E. Jackson, J.—The plaintiff prefers this suit to recover the sum of rupees 112, principal and interest, from the defendant, under the following circumstances:-- The defendant had sued the plaintiff for arrears of rent, alleging that the defendant's rent was at the rate of rupees 50 per annum. The present plaintiff in answer stated that his rent was rupees 25 per annum. In the first Court there was a decree at the rate of rupees 25. In the appellate Court, however, that decision was reversed, and a decree was passed at the rate of rupees 50. On special appeal, the lower appellate Court's judgment was set aside, and the rate decreed by the first Court was held to be the proper rate. In the meantime, however, the present defendant had sued out execution of the lower appellate Court's decree at the higher rate, and had realized the whole of the rent at the higher rate. The present plaintiff, after applying to the Collector to recover the excess amount which the defendant had in this way realized, and having been told by the Collector that he could not interfere, brought this suit in the Civil Court to recover the amount which the defendant had wrongly obtained from him. In the first Court he obtained a decree, but in the appellate Court, the Subordinate Judge of Purneah held, first, that the suit was barred by the Law of Limitation; and, secondly, that the Collector was the only authority who had jurisdiction to refund the excess money; and, upon that view of the law, the Subordinate Judge dismissed the suit.

On special appeal, it is contended that the Subordinate Judge was wrong on both these points.

2. A preliminary objection to the hearing of the special appeal arises on the

ground that the suit is one in the nature of a Small Cause Court suit. The suit is one for ordinary damages, and is of a nature that it might have been brought in a Court of Small Causes, and, therefore, no special appeal lies to this Court. This objection, however, was not directly taken by the opposite side, but it is one which goes to the root of the special appeal, and is one which bars the hearing of the special appeal. But looking to all the facts and circumstances of this case, there appears to be no doubt that the Subordinate Judge had jurisdiction; and if he had jurisdiction in the case, and has refused to exercise it, this Court is bound in justice to the party injured by his decision to see that that jurisdiction is exercised. u/s 15 of the Charter Act, this Court has authority to see that the lower Courts carry out their duties correctly; and the present is certainly a case in which, u/s 15 of the Charter, the lower appellate Court should be directed to exercise the jurisdiction which it possesses under the law.

3. It is true, as the Subordinate Judge has said, that the Collector might have exercised his jurisdiction in the first instance, and might have taken steps to return the excess money paid by the defendant through the plaintiff's fault.

4. The rules regarding execution proceedings in the Civil Court and in the Collector's Court are somewhat different. Section 11, Act XXIII of 1861, directs that all questions arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, shall be determined by order of the Court executing the decree, and not by a separate suit." No such law, however, applies to cases before a Collector's Court. That section is not in any way made applicable to oases under Act X of 1859. Under such circumstances, as the Collector has not exercised a proper jurisdiction, and as an injury has clearly been done to the plaintiff, the claim should be heard by the Civil Court. There being no bar to such hearing, it is not right that the Subordinate Judge should send the plaintiff back again to the Collector. He should, we think, hear the appeal and decide the case finally.

5. With reference to his decision on the question of limitation, the Subordinate Judge does not state under what section of the Limitation Law he holds the claim to be barred. He apparently applies a three-years' limitation. Amongst all the different sections in the Limitation Law there is no special section which refers to oases of this description. Such cases, we think, fall under clause 16, section 1 of the Act, which would give six years' limitation from the time when the cause of action accrued. In the present case it is admitted that the plaintiff's cause of action accrued on the 1st of August 1865, when the High Court restored the decision of the first Court; and, therefore, the plaintiff is not barred.

6. The special appeal must be dismissed, and the case will be remanded to the Subordinate Judge, in order that he may restore it to his file, and proceed to try it. The only issue which he will have to try is the issue of fact, whether the defendant's allegation that he repaid the excess money to the plaintiff is correct or not. We make no order as to the costs of this Court, as we do not think that this is a case in which costs should be awarded.