
(1936) 03 PAT CK 0018
In the Patna High Court

Kameshwar Singh

APPELLANT

Vs

Mahabir Pasi

RESPONDENT

Date of Decision : 30-03-1936

Acts Referred:

Bengal Tenancy Act, 1885 — Section 193
Limitation Act, 1963 — Article 110
Registration Act, 1908 — Section 3

Citation : AIR 1936 Patna 403

Hon'ble Judges : Rowland, J;Agarwala, J

Bench : Full Bench

Judgement

Rowland, J.—These three applications raise the question whether limitation should be calculated under Article 110, Lim. Act, as has been done in the Courts below or under Article 2(b) of Schedule 3, Ben. Ten. Act. The suits were brought to realise money due on settlement by auction of date and toddy palm trees made in April 1930 for the year 1337. The settlement holders got the right to take the juice from the trees for the season. The applications have been referred by Macpherson, J., to be decided by a Division Bench. As pointed out in the order of reference the payments by the pasis are not rent. This is settled by a long line of authority beginning with Deb Nath Ghose v. Pachoo Mollah (1866) 6 WR CR 8, a decision which has been followed in Jatindra Mohon Lahiri v. Abdul Azir Meah 1920 Cal 733 and recently by a single Judge of this Court in Jhakar Sahu v. Raj Kumar Tewari 1936 Pat 102. The last mentioned case referred to mahua fruits but the principle is the same. According to these decisions the payments sued for are not rent and suits to realize them ought to be brought in a Small Cause Court. It follows, I may add, that the Munsif to whom the complaints were presented ought not to have entertained them but should have returned them for presentation to a Small Cause Court. This view of the nature of the suits is held in other High Courts also: Maung Kywe v. Maung Kala 1927 Rang 94 decided that suits for the price of the juice of toddy trees are Small Cause Court suits, following a decision in Natesa Gramani v. Tangavelu Gramani 1914 Mad 362,

where it was held that a lease of palmyra trees was not a lease of Immovable property. That decision cited Section 3, Registration Act, where moveable property is defined as including "juice in trees." But it was argued that Section 193, Ben. Ten. Act. makes the provisions of that Act applicable to suits for recovery of anything payable or deliverable in respect of any rights of pasturage, forest-right, rights over fisheries and the like. The answer to this argument is that such suits to come within this section must be suits between landlord and tenant. The title and preamble of the Bengal Tenancy Act show that it was an Act to amend and consolidate enactments relating to the law of landlord and tenant. It was said in *Mohendra Nath Kalamoree v. Koilash Chandra Dogra* 4 CWN 605.

It is clear that the Bengal Tenancy Act, according to its preamble, is an Act relating to the law of landlord and tenant in Bengal, and that, therefore, all its provisions, including the schedules and the period of limitation laid down in the schedules, must be applicable only to suits in which the parties stand in the relation of landlord and tenant.

2. The expression "landlord" and "tenant" are defined in Section 3 of the Act. The definitions make it clear that no one is a tenant who does not hold land under another person. In the cases before us it cannot be said that the defendants by taking settlement of the toddy trees were admitted to occupation of any land: they did not hold land under the plaintiff; they are not his tenants and no part of the provisions of the Act applies to these suits. The Courts below have correctly applied the limitation under Article 110, Lim. Act. In the order of reference of Macpherson, J., a decision in *Moti Singh v. Deoki Singh* 1936 Pat 66 is referred to; but there is nothing in that decision which has any application to the facts of the cases before us. All that was there decided was that for the purposes of a partition suit palm trees might be treated as Immovable property. I would therefore dismiss all these applications with costs. Hearing fee one gold mohur in each case.

Agarwala, J.

3. I agree.