

**(1938) 08 PAT CK 0029**  
**In the Patna High Court**

|                           |    |            |
|---------------------------|----|------------|
| Kameshwar Singh Bahadur   |    | APPELLANT  |
|                           | Vs |            |
| Rampat Thakur and Another |    | RESPONDENT |

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**Date of Decision :** 09-08-1938

**Acts Referred:**

Bihar Tenancy Act, 1885 — Section 193

**Citation :** AIR 1938 Patna 607

**Hon'ble Judges :** Wort, Acting C.J.;Manohar Lall, J

**Bench :** Full Bench

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**Judgement**

Wort, Ag. C.J.

1. This appeal arises out of a claim for payment reserved under a Settlement for the year 1339 of the right to cut grass.
2. Two substantial questions were argued in the Courts below: the first was a plea of payment and the second, the question of limitation. The trial Court accepted the plea of payment so far as part of the claim was concerned and decided against the defendant on the point of limitation. The Appellate Court whilst deciding against the defendant on the plea of payment accepted his defence on the point of limitation. I have already stated that the Settlement was with the defendant for the year 1339 and one of the questions which arose with regard to the matter of limitation was, when was payment to be made? The defendant contended that the payment was to be made in Jeth of the year 1339 which would put the matter beyond the period of limitation. The learned Judges in the Courts below have come to the conclusion that there was no agreement between the parties as to this but have found that the payment was to be made on 30th Jeth.
3. The contention of Sir Sultan Ahmad on behalf of the plaintiff-appellant is that Section 193, Bihar Tenancy Act, applies and therefore Schedule 3, Sub-clause (2) (b), where the rent is paid in money, the period of limitation is three years and the time from which the period begins to run is the "last day of the agricultural

year in which the arrear fell due". There is no dispute that if the Schedule applies to this action it is not barred by limitation. Section 193 of the Act provides:

The provisions of this Act applicable to suits for the recovery of arrears of rent shall, as far as may be, apply to suits for the recovery of anything payable or deliverable in respect of any rights of pasturage, forest rights, rights over fisheries and the like.

4. It is manifest that if the right granted to the defendant in this case is one of the rights described in Section 193, then it is equally clear that Schedule 3 applies on the point of limitation. Reliance is placed by the respondent on the decision of this Court in Kameshwar Singh Vs. Mahabir Pasi, where a right to collect toddy dues was in dispute.

5. The learned Judges in that case decided that the rights regulated by the Bengal Tenancy Act or the Bihar Tenancy Act, as it is now, were rights bearing upon the relationship of landlord and tenant, and that the grant to a person of the right to collect toddy dues from toddy plants did not create the relationship of landlord and tenant within the provisions of the Act and therefore the Schedule did not apply. The difference between that case and this is that in this case the right which the defendant had is expressly covered by Section 193. It is a right in respect of pasturage; it may be an actual grazing or cutting of grass, but for whatever purpose it may be used it comes within that provision and therefore within the Section and consequently within the Schedule. The rights to which Section 193 relates are, in my opinion, rights which do not create the relationship of landlord and tenant and as I have stated and repeat this case is expressly covered by the provision of the Section and therefore the period of limitation provided by the Schedule applies.

6. For those reasons, in my opinion, the decision of the Judge in the Court below was wrong and that of the trial Court was right. The Appellate Court's judgment must therefore be reversed and that of the trial Court restored.

7. The appeal is allowed with costs. This judgment will govern all the three appeals Nos. 220, 426 and 427 of 1937.

Manohar Lall, J.

8. I agree. The claim of the plaintiff attracts fully the operation of the words used in Section 193, Bihar Tenancy Act. The plaintiff asked for recovery of a sum fixed by the bid sheet and payable to him in respect of the right of cutting grass from Kharour lands granted to the defendant for one year. This necessarily required that the defendant would be in possession of the whole area of the land from which he had a right to remove grass. The right conferred was therefore in the nature of a right of pasturage or forest rights with the result that the period of limitation for the suit will be as provided in Schedule 3 of the Act.

9. It is unnecessary to consider on the present occasion the correctness of the view that Section 193 of the Act will only apply if the relationship between the

parties is strictly that of landlord and tenant as was remarked in the case reported in Kameshwar Singh Vs. Mahabir Pasi, . In my judgment the Preamble of the Act cannot control the clear words of the enactment when they are unambiguous as in Section 193: see Powell v. Kempton Park Racecourse Co. (1897) 2 Q.B.D. 242.