

(1934) 06 CAL CK 0020
In the Calcutta High Court

(Khondakar) Kasemali

APPELLANT

Vs

Hriday Nath Mandal and Others

RESPONDENT

Date of Decision : 06-06-1934

Acts Referred:

Citation : AIR 1935 Cal 142

Hon'ble Judges : Henderson, J

Bench : Division Bench

Judgement

Henderson, J.—This appeal which is by defendant 1, raises a question of limitation. The facts upon which it has to be determined are as follows: A certain holding belonged to one Nitai; eight annas share passed to his son Rasik and then to Rasik's widow Kali Dasi. Kali Dasi granted a lease to the plaintiff, who had a lease of the other eight annas from one Panchanon. The plaintiff sold his interest to Sukumari, wife of Panchanon, and on the same day took a sublease from her. The appellant purchased the interest of Kali Dasi in execution of a decree and entered into possession of half the holding. The plaintiff instituted the present suit for a declaration of his title and recovery of possession. Among other defences the appellant pleaded that the suit is barred by limitation, as Article 3, Schedule 3, Bengal Tenancy Act, applies. This contention prevailed in the first Court with the result that the suit was dismissed. The plaintiff then appealed and the learned Subordinate Judge has held that the special rule of limitation does not apply. Defendant 1 has now appealed to this Court and contends that the decision of the learned Munsif should be restored.

2. Two arguments have been advanced on behalf of the appellant: (1) that as Sukumari was not recognized by Kali Dasi, the plaintiff is a tenant of the appellant; (2) that in any event the special rule of limitation applies. The first point has no basis in the record and was not taken in the lower Courts. What evidence there is suggests that the transfer was recognized. It has been proved that the plaintiff paid rent to Sukumari after the transfer: There was no suggestion even that he continued to do so to Kali Dasi. If the appellant had

really wanted to make a case that the transfer was not recognised, he should have specifically raised it. It is not the sort of point that can be taken for the first time in second appeal.

3. On the second point it was argued that so long as the person dispossessed is a raiyat or under raiyat and the person affecting the dispossession is anybody appearing in the chain of landlords, then the special rule will apply. This process would clearly have to stop somewhere; otherwise the Secretary of State, after dispossessing an under-raiyat in a revenue paying state, could always plead this special rule of limitation. Mr. Nausher Ali suggested that the process should stop with the immediate landlord of a raiyat. But there is no logical reason for stopping it anywhere. I have no doubt that the article only applies when the person effecting the dispossession is the landlord of the plaintiff. This view is supported by the decision reported in *Krishnachandra v. Satish Chandra* 1916 Cal 883 and *Haran Chandra v. Madan Barai* 1921 Cal 249. In the present case there is no relationship of landlord and tenant between the appellant and the plaintiff. I therefore hold that the general law of limitation applies.

4. The result is that the appeal fails and is dismissed with costs.