

(1927) 07 CAL CK 0067
In the Calcutta High Court

Maharaj Bahadur Singh of Baluchar District	APPELLANT
Vs	
Sm. Achala Bala Devi and Others	RESPONDENT

Date of Decision : 20-07-1927

Acts Referred:

Citation : AIR 1928 Cal 106

Hon'ble Judges : Page, J;Graham, J

Bench : Full Bench

Judgement

Page, J.—This is an appeal from a decree of the learned District Judge of Murishidabad affirming a decree of the learned Munsif of Jangipur. The material facts are as follows : The appellant brought a suit and obtained a decree, and in execution of that decree attached certain standing crops. The respondent claimed that the land and the crops standing upon it belonged to her and on 25th January 1919 her claim was upheld. Meanwhile, notwithstanding the claim which had been presented by the respondent, the sale was held in execution of the decree, and the standing crops were sold to a servant of the appellant. The day after the respondent had vindicated her right to the crops and had obtained an order that the crops belonged to her the appellant himself or by his agents came upon the land, out the crops, look them away, and subsequently took possession of the proceeds of the sale. Thereupon, within three years of the decision in the claim case the plaintiff" brought the present suit against the appellant and two of his servants in whose name the standing crops had been purchased for damages representing the value of the crops which had been cut and removed by the appellant, and she obtained a decree in both the lower Courts. The learned advocate who appeared for the appellant, if I may say so, had most skilfully endeavoured to obtain the reversal of these decrees upon the ground of limitation. He does not contend in second appeal, and it is not open to him to contend that the crops standing or cut did not belong to the respondent, but he claims that if the claim is to recover the crops upon the footing that they were immovable properties the plaintiff's cause of action is barred by Article 36, Limitation Act, and if they are moveable properties it is barred by Article 29,

Limitation Act. I do not agree with him. In my opinion, this case is governed by either Article 48 or 49, and Jenkins, C.J., in the case of *Jadu Nath v. Hari Kar*¹⁷ C.W.N. 308 distinguished the case (upon which the appellant relies) of *Hari Charan Fadikar v. Hari Kar* (1905) 32 Cal. 459, upon the ground that in the latter case the decision proceeded upon the footing that

there is nothing to show that they (the standing crops) were out when the distress was effected, whereas in the case before him there is a distinct finding by the Munsif that the crops had been cut and being so cut were removed by the defendant.

2. In the present case, the finding of both Courts is that the very next day after the claim case was decided in favour of the respondent the defendant and his agents came upon the land and cut and removed the standing crops. I agree with the decision of the learned District Judge that the present case is governed by the case of *Jadu Nath Dandupat v. Hari Kar*¹⁷ C.W.N. 308 with the result that the appeal will be dismissed with costs.

Graham, J.

3. I agree.