

**(1913) 12 CAL CK 0008**  
**In the Calcutta High Court**

Maharaja Birendra Kisore Manikya Bahadur

APPELLANT

Vs

Laksmi

RESPONDENT

---

**Date of Decision :** 22-12-1913

**Acts Referred:**

**Citation :** 30 Ind. Cas. 896

**Hon'ble Judges :** Beachcroft, J; Asutosh Mookerjee, J

**Bench :** Division Bench

---

## Judgement

1. This is an appeal by the plaintiff in a suit for declaration of title to land and for assessment and recovery of rent in respect thereof. The case for the plaintiff is that the defendants are his tenants in respect of some lands within his estate, that they have encroached upon the disputed lands which were contiguous to the lands of their tenancy and that they are consequently liable to pay a fair rent for the encroached portion. The defendants plead that their ancestors excavated the disputed tank and that the rent was redeemed. They further contend that they have never paid rent and that the title of the plaintiff to realise rent has been barred by the Statute of Limitation. The Courts below have dismissed the suit.

2. It is not disputed that more than 12 years before the commencement of the suit, in the course of Settlement proceedings, the defendants asserted to the knowledge of the plaintiff a title to hold the land without payment of rent to him. Their case at the time was that they held the land under a rent-free grant and were under no legal obligation to pay rent therefor to the plaintiff. The question in controversy is, whether the title of the plaintiff to realise rent from the defendants is barred by the Statute of Limitation. In our opinion, the question must be answered against the plaintiff.

3. The plaintiff seeks to assert his right to a limited interest in the land. This is plain from the frame of the suit, which he describes as a suit for declaration of title to land and for assessment and recovery of rent thereof. The valuation of the suit is stated, for purposes of jurisdiction and for payment of Court-fees, to be based on the estimated value of the disputed land together with the amount

of rent claimed. There can be No. room for reasonable controversy that the suit is in its essence a suit for recovery of a limited interest in land. In so far as that interest is concerned, the defendants to the knowledge of the plaintiff asserted a hostile title more than 12 years before the commencement of the suit. When they first encroached upon these lands, it was open to the plaintiff to assume that they had taken possession of the land in their character as his tenants. When, however, more than 12 years before the commencement of this litigation, the defendants repudiated that position, to the knowledge of the plaintiff, it was his duty to enforce his right to receive rent from the defendants by an appropriate proceeding. He has failed to do this within the period allowed by the Statute of Limitation. He has never received rent for this land, and his right to receive rent has always been repudiated by the defendant; such repudiation has lasted, to his knowledge, for more than 12 years. It is consequently clear that under Article 144 of the second Schedule of the Limitation Act, the plaintiff has no enforceable title. The view we take is in accordance with that taken in the cases of *Ishan Chundra Mitter v. Raja Ramranjan* 2 C.L.J. 125; *Raktoo Singh v. Sudhram Ahir* 8 C.L.J. 557 and *Pratap Chunder v. Shukhee Soonduree Dassee* 2 C.L.R. 569. In these circumstances the plaintiff can derive no benefit from the principle recognised in the cases of *Kingsmill v. Millard* (1855) 11 Exch. 313 : 3 Com. L.R. 1022 : 105 R.R. 538; *Doe d Lloyd v. Jones* (1846) 15 M. & W. 580 : 16 L.J. Ex. 58 : 71 R.R. 772; *Whitmore v. Humphris* (1871) 7 C.P. 1 : L.J.C.P. 43 : 25 L.T. 496 : 20 W.R. 79 and *Attorney General v. Tomline* (1880) 15 Ch. D. 150 at p. 160 : 43 L.T. 486 : 49 L.J. Ch. 377 namely, that encroachments made from the waste by a tenant, whether the land taken belongs to the landlord or to a stranger, are presumed to have been made for the benefit of his landlord, unless it appears clearly from some act done at the time that the tenant intended to make the encroachment for his own benefit and not to hold it as he held the farm to which the encroachments were adjacent: *Doe d Lewis v. Rees* (1834) 6 Car. & P. 610; *Andrews v. Hailes* (1853) 2 El. & Bl. 349 at p. 353 : 22 L.J. Q.B. 409 : 17 Jur. 621 : 21 L.T. (o.s.) 151 : 95 R.R. 593 : 1 W.R. 366 : 118 E.R. 797. No doubt as a general rule, the intention of the tenant to make an encroachment for his own benefit must be shown at the time when the encroachment is made, but a subsequent severance of the encroachment from the demised premises may have the same effect if brought to the knowledge of the landlord, although if the landlord is allowed to remain under the belief that the encroachment was held as part of the holding, the tenant might be estopped from denying it: *Kingsmill v. Millard* (1855) 11 Exch. 313 : 3 Com. L.R. 1022 : 105 R.R. 772; *Doed Lloyd v. Jones* (1846) 15 M. & W. 580 : 16 L.J. Ex. 58 : 71 R.R. 772; *Nuddyarehand Shaha v. Meajan* 10 C. 820, *Laws of England* edited by Halsbury, Volume IV, paragraph 1144.

4. The result is that the decree of the Court below is affirmed and this appeal dismissed.

5. It is conceded that this judgment will govern Second Appeal No. 929 of 1911, which also is dismissed.