

**(1914) 04 CAL CK 0006**  
**In the Calcutta High Court**

Pitambar Mahapatra

APPELLANT

Vs

Bhagabat Lal, on his death his Heirs and Legal,  
Representatives, Bhairab Pal and Others

RESPONDENT

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**Date of Decision :** 27-04-1914

**Acts Referred:**

**Citation :** AIR 1914 Cal 654 : 24 Ind. Cas. 860

**Hon'ble Judges :** Richardson, J; Fletcher, J

**Bench :** Division Bench

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### Judgement

Fletcher, J.—This is an appeal from a judgment of the learned Subordinate Judge, First Court of Midnapore, dated the 25th April 1910, reversing the decision of the Munsif. Only one point arises in this appeal on the judgments of the lower Courts and that is whether the present suit is barred by limitation, and that depends upon a consideration of the question whether or not the present suit comes within Article 3, Schedule III of the Bengal Tenancy Act. Article 3 of Schedule III is in these words : To recover possession of land claimed by the plaintiff as a raiyat or an under-raiyat the period of limitation is two years from the date of dispossession. It is not denied in this case that the defendant No. 1 is the landlord, and the present plaintiff claims to be a raiyat. It is said that that Article does not apply because the plaintiff obtained possession of the holding in certain execution proceedings under a decree in a suit for rent which was brought by the defendant No. 1 against the defendant No. 2, who was the former tenant of the property and who afterwards sold the property to the defendant No. 1. The cases that have been cited to us are not at all easy to reconcile. In the case of Aminuddin Munshi v. Ulfutunnissa Bibi 3 Ind. Cas. 315 : 9 C.L.J. 131 : 13 C.W.N. 108. it was held that when a third party acting in collusion with the landlord purchases a holding in execution of a rent decree the suit is governed by Article 3. If that be so, there can be no distinction in principle between the case when the landlord purchases in his own name or in the name of a new tenant. Moreover in this case the plaintiff alleges that ho was ousted by the landlord forcibly taking possession and cutting the crops, and not by delivery of

possession to the defendant by the Civil Court. In these circumstances the plaintiff was clearly ousted by the defendant who was his landlord and the Article 3 applies.

2. In a very recent case [Kamal Dhari Thakur v. Rameshwar Singh 19 Ind. Cas. 545 : 17 C.W.N. 817.] the decision in the case of Aminuddin Munshi v. Ulfutunnissa Bibi 3 Ind. Cas. 315 : 9 C.L.J. 131 : 13 C.W.N. 108. was dissented from. It is not necessary for us to consider whether, in our opinion, we agree with those views as the evidence as to the ouster shows that the defendant dispossessed the plaintiff as landlord.

3. I, therefore, think that the learned Judge in the lower Appellate Court arrived at a correct conclusion.

4. The present appeal must fail and be dismissed with costs.

Richardson. J.

5. I agree.