

(1888) 04 CAL CK 0002
In the Calcutta High Court

Pudmanund Singh and Others

APPELLANT

Vs

Khub Lal Sahu and Others

RESPONDENT

Date of Decision : 10-04-1888

Acts Referred:

Citation : (1888) ILR (Cal) 542

Hon'ble Judges : Norris, J;Beverley, J

Bench : Division Bench

Judgement

1. We are of opinion that this appeal must be allowed. The facts of the case appear to be these : There are two separate pieces of land, having separata jumma, with one towzi number. The plaintiff is the owner of one of these pieces of land, and the defendant is the owner of the other piece. The defendant did not pay the Government revenue in respect of his land from September 1873 to June 1885. Toe towzi number of both pieces being the same, there was danger of the plaintiff's portion being sold along with the defendant's holding for arrears of Government revenue in respect of toe defendant's holding. Plaintiff, to save his own estate, paid the Government revenue in respect of the defendant's from September 1873 to June 1885, and brings this suit to recover the amount he paid, namely, Rs. 700 principal and Rs. 485 interest.

2. Both the lower Courts have given him a decree for the whole amount claimed, holding that Article 132, Schudle II of the Limitation Act applies to this suit; and that the period of limitation is twelve years. In both the lower Courts it was contended that Article 99, Schudle II of the Limitation Act applies, and that argument is again advanced in second appeal before us. We are of opinion that that argument ought to prevail, and that the plaintiff can only recover moneys advanced within three years before the institution of the suit. The Full Bench decision in Kinu Bam Dass v. Momffer Hosain Shaha 14 C. 809 is a conclusive authority for holding that the plaintiff had no lien upon the defendant's holding in respect of payments that he had made, and the case of Bamdin v. Kalka Pershad 12 I.A. 12 : 7 A. 502 is a conclusive authority to show that Article 132 is

only applicable to cases where the money sought to be recovered is a charge upon the property Their Lordships say at the bottom of page 14 : "But the Counsel for the appellant relied upon the language of the 132nd article of the second schedule," "for money charged upon Immovable property twelve years." His contention was that that period of twelve years applied to every remedy which the instrument carried with it, and gave twelve years for the personal remedy against the mortgagor as well as against the mortgaged property.

Looking at the previous language with reference to personal suits, and at the language of Article 132, their Lordships think great inconveniences and inconsistencies would arise if they did not read the latter as having reference only to suits for money charged on Immovable property to raise it out of that property.

3. Therefore holding as we do that the plaintiff had no charge upon the property, it is clear that upon the authority of this case, Article 132 of the Limitation Act will not apply. Article 99 would be the only Article that would apply. The appeal will, therefore, be allowed, with full costs in this Court and proportionate costs in the Courts below. The decree of the lower Appellate Court will be modified by giving the plaintiff a personal decree against the defendant in respect of so much of the money as he had paid within three years next before the institution of the suit.