
(1896) 07 CAL CK 0014
In the Calcutta High Court

Raghubir Ojha and Others

APPELLANT

Vs

Soman Gope

RESPONDENT

Date of Decision : 28-07-1896

Acts Referred:

Bengal Tenancy Act, 1885 — Section 155, 25

Citation : (1897) ILR (Cal) 160

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

Bench : Division Bench

Judgement

Trevelyan and Beverley, JJ.—This suit was brought to evict a tenant on the ground of his having used the land in a manner which rendered it unfit for the purposes of the tenancy. The land was admittedly let for agricultural purposes, but the tenant turned it into an orchard. The lower Appellate Court has held that the land has been rendered unfit for the purposes of the tenancy, and even if we were inclined to do so, we are unable to interfere with this finding in second appeal.

2. The only question of law in the appeal is whether the suit was barred by limitation. The Munsif held that it was barred by article 32 of the 2nd schedule of the limitation Act. The Subordinate Judge has held that it was not barred, and that article 120 applied.

3. It is argued before us that article 32 applies, and we think that it does apply. There can be no doubt but that this case is within the letter of that article, and there is nothing in the article to limit it to a suit for compensation. The article is independent of the nature of the remedy, and apparently applies equally to all classes of suits brought upon the cause of action referred to in the article. We think that this suit is clearly of the kind which the article is intended to provide for. It asks for removal of the trees on the land and for ejectment.

4. We notice that the Legislature in enacting the Bengal Tenancy Act provided one year's limitation for a suit to eject a raiyat on account of a breach of

condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach; that is to say, for a suit under clause (b) of Section 25 of the Act. They omitted to provide in that Act any limitation for a suit under clause (a) of that section, and they may possibly have considered that the general law which provides two years' limitation sufficiently dealt with that case. If it were otherwise, there would be an extraordinary difference between the periods provided in the one case for a suit where there is a written contract, and in the other for a suit of a similar nature where there is no written contract. Moreover, apart from the words of the section, it is obvious that in a case of this kind one would expect to find the Legislature fixing a comparatively short period of limitation, as great hardships might be done to a tenant if his landlord were to stand by and take no steps might close upon the expiration of a long period of limitation.

5. We have been to some extent pressed by two decisions by Division Benches of this Court. The first is the decision in the case of *Kedarnath Nag v. Khettur Paul Sritirutno* ILR 6 Cal. 34 and the second that of *Gunesh Dass v. Gondour Kootmi* ILR 9 Cal. 147. In neither of those cases is any reason given for the conclusion at which the Court arrived that article 32 was inapplicable. Moreover those cases are not cases under the Bengal Tenancy Act, or cases exactly of the class to which the present case belongs. If we found that they were identical with the present case, we should have been bound to refer the matter to a Full Bench, but we think it unnecessary to do so here. This suit was brought u/s 25, clause (a) and Section 155 of the Bengal Tenancy Act, and the question is whether a suit of that kind comes within article 32 of the Limitation Act. That question has never yet, as far as we know, been decided. We think that it does come under article 32.

6. In the result we set aside the decision of the Subordinate Judge and restore that of the Munsif. The appellants are entitled to their costs in this Court and in the lower Appellate Court.