

(1925) 12 CAL CK 0031
In the Calcutta High Court

Raja Satya Niranjan Chakra Barty and Others

APPELLANT

Vs

Abrahim Mandal and Others

RESPONDENT

Date of Decision : 22-12-1925

Acts Referred:

Cess Act, 1880 — Section 64A

Citation : AIR 1926 Cal 1069 : 95 Ind. Cas. 843

Hon'ble Judges : Panton, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Greaves, J.—These are appeals from an order of the District Judge of Birbhum, dated the 22nd March 1924 which confirmed an order of the Munsif of Dubrajpur. The appeal is by the decree-holders and the short question is whether the period of limitation is that prescribed by the schedule to the Bengal Tenancy Act or the ordinary period of limitation applicable in an ordinary suit. The matter turns upon the construction of Section 64 A of the Cess Act, IX of 1880. That section provides that all sums due to the holder of any estate or tenure under the provisions of that Chapter of the Act in respect of land held rent-free (as this land is held) may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation. Now it seems to me as both the Courts below have held that the period of limitation applicable to a case of this nature is that prescribed by Article 6 of the Third Schedule of the Bengal Tenancy Act. As I read Section 64 A it lays down that the same rules of limitation are to be applied in a case under the section as would apply in rent-suits to recover rent of a transferable tenure or holding. Now, clearly, a suit for recovery of rent of a transferable tenure or holding would be a suit under the Bengal Tenancy Act and the rules of limitation applicable under that Act are the rules laid down in Sch. III including the rules" laid down by Article 6 But it is contended that these words only prescribe the course to be followed in order to enforce the payment of cess and once a decree is obtained

the ordinary rules of limitation apply, unless the case is one between a landlord and a tenant and we were referred to various decisions in which it has been held that in a suit which is not between a landlord and a tenant the Bengal Tenancy Act has no application and consequently, it is said that the provisions of Sch. III and the Articles therein have no application. We were also referred to the case reported as Mahanund Chuckerbutty v. Banimadhub Chatterjee 24 C. 27 : 12 Ind. Dec. 683, which was a case u/s 147 of the Cess Act. It w&s there held that although the procedure for the realisation of cess may be the same as laid down for realisation of rent due upon a tenure, it did not necessarily follow that the effect of a sale for cess would be the same as the sale for arrears of rent in which the tenure itself was liable to be sold. But it does not seem to me that that decision is of any assistance to the present case for, that decision depends upon the words of Section 47 of the Cess Act and we are dealing not with Section 47 or with the words of that section but with the provisions of Section 64A of the Act and with the words of that section and it seems to me that if one reads the words of Section 64A in their ordinary and natural meaning they have the meaning which we have given to them and the same rules of limitation ought to apply in suits of this nature as would apply in the case of a rent-suit to recover rent of a transferable holding to which, in my opinion, the provisions of the Sch. 3 of the Bengal Tenancy Act would clearly apply. I do not think myself that we are concerned with the question as to whether the suit is one between a landlord and a tenant but we are concerned with the express words of Section 64 A which have the meaning which we have given to them.

2. The result is that the appeals fail and are dismissed.

Panton, J.

3. I agree.