

**(1899) 04 CAL CK 0008**  
**In the Calcutta High Court**

Sharoop Dass Mondal

APPELLANT

Vs

Joggesur Roy Chowdhry

RESPONDENT

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**Date of Decision :** 11-04-1899

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 155

**Citation :** (1899) ILR (Cal) 564

**Hon'ble Judges :** W. Maclean, J; Macpherson, J; Jenkins, J; Hill, J; Ghose, J

**Bench :** Full Bench

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**Judgement**

Maclean, C.J.—The question submitted for our consideration is whether Article 32 or Article 120 of the Second Schedule of the Limitation Act applies to the present case.

2. To ascertain this, we must consider what was the nature of the suit and what was the relief sought. The primary relief sought was in effect a mandatory injunction directing the defendant to fill up the tank in question and to pay the plaintiff compensation for his alleged wrongful act; the secondary relief was for ejectment. We say secondary, for the ejectment was not to follow, and could not follow, save upon failure of the defendant to fill up the tank and make the compensation; it was contingent on that failure. For the tort complained of, the plaintiff had three remedies, (1) damages, (2) a mandatory injunction, and (3) ejectment, contingent upon the tenant not complying with certain conditions. This being the nature of his suit, under which article of the Limitation Act does the case come? If under Article 32, the plaintiff is barred; if under Article 120, he is not.

3. Article 32 is as follows: Against one who having a right to use property for specific purposes perverts it to other purposes." As a general principle, in construing this Act of the Legislature we ought not to regard a case as coming under Article 120, unless clearly satisfied that it does not come under one of the many articles dealing with specific cases. Further, if there be two articles which may cover the case, the one, however, more general and the other more

particular or specific, as a principle of construction the more particular and specific article ought to be regarded as the one governing the case. It cannot be successfully contended that, reading the language used according to its usual and ordinary acceptance, the words of Article 32 are not sufficiently wide to cover the present case. The case is clearly within the words of the article: it is the precise case provided for by the article. The defendant is one, who, having a right to use the property demised to him for agricultural purposes, has perverted it to another purpose, viz., that of a tank. Upon what principle then can we properly say that the article cannot apply? We are invited rather to wander into the jungle of speculation than follow the beaten track defined by the language used.

4. It is contended for the respondent, and this was the stress of his contention, that this is an action based upon, or framed under, Section 155 of the Bengal Tenancy Act, 1885, and that, as that Act was not in existence when the Limitation Act of 1877 was passed, the Legislature could not have intended that Article 32 of the latter Act should apply to cases framed under the provisions of the former Act.

5. This appears to us a fallacy. Suits against a tenant for perverting property to purposes other than those for which he had the right to use it were well known before the Bengal Tenancy Act of 1885, though before that Act there might have been no right to eject for such perversion independent of contract. Section 155 creates no fresh class of suit: it affords no fresh cause of action; it only provides that in ejectment suits a tenant may obtain relief against forfeiture on certain terms. It would be a strange thing to infer from that section that the Legislature intended to interfere with the operation of the provisions of the Statute of Limitations then in force, or by reason of Section 155 to say that when a person is sued for perverting the property demised to him to purposes other than those specified the ordinary Statute of Limitations did not apply. The Bengal Tenancy Act of 1885 deals specifically with the question of limitation in certain cases, and this supports an inference that the Legislature intended that any other cases should be left to the general law, and the policy of shortening the period of limitation in cases more or less analogous to the present, is indicated by Article 1 in Schedule III. But even if the plaintiff had merely asked for ejectment, leaving it to the defendant to raise his claim to relief against forfeiture, as given him by Section 155, seeing that the claim to eject is based on the case expressly provided for by Article 32, we should have said that article applied. That article says nothing about the relief to be sought or to be granted; it only lays down within what particular period of limitation a particular suit based upon a particular tort is to be brought.

6. It is said that the Bengal Tenancy Act describes an action such as this as an "ejectment action," and it is consequently suggested that Article 143 applies; but this article, which is more general in its terms than Article 32, only applies to a case where the plaintiff is entitled to possession by reason of forfeiture or breach

of condition, that is, a condition of the tenancy but the plaintiff here would only be entitled to possession upon non-compliance by the defendant with the order of the Court as to filling up the tank and making compensation. The present suit is framed in tort, not on breach of any contract. In our opinion the case is within Article 32-a conclusion consistent with the decision in this Court in the case of Soman Gope v. Raghubir Ojha I.L.R (1896) 24 Cal., 160, and with the principles of the case of Gangadhar v. Zahurriya I.L.R (1886) 8 All, 446, although in the latter case the plaintiff did not seek to eject. These authorities we prefer to those of the cases of Kedarnath Nag v. Khettur Paul Sritirutno I.L.R (1880) 6 Cal., 34, and Gunesh Dass v. Gondour Koormi I.L.R (1882) 9 Cal., 147. The plaintiff is consequently out of time, and the appeal must be allowed with costs, and the suit dismissed with costs.