

(1915) 03 CAL CK 0046
In the Calcutta High Court

Taher Mondal

APPELLANT

Vs

Tarafdi Gharami and Another

RESPONDENT

Date of Decision : 31-03-1915

Acts Referred:

Bengal Tenancy Act, 1885 — Section 155
Limitation Act, 1963 — Article 143, 32

Citation : 33 Ind. Cas. 923

Hon'ble Judges : Sharfuddin, J; Newbould, J

Bench : Division Bench

Judgement

Sharfuddin, J.—This is an appeal from the judgment and decree of the Additional District Judge of 24-Parganas, dated the 12th May 1913, setting aside the judgment and decree of the Munsif of Basirhat, dated the 30th April 1912.

2. The plaintiff's Suit against the respondents is for recovery of khas possession of certain lands by ejectment, on the ground that his tenant, defendant No. 2, in collusion with the defendant No. 1, allowed the latter to encroach upon the lands of the tenancy at the time of the re-excavation of a tank and further on the ground that he made an exchange of some lands of the tenancy With the defendant No. 1 in contravention of the terms of the kabuliyat. The present suit, it is alleged, was instituted on the refusal by the defendant No. 2 to pay compensation.

3. The defence of the defendant No. 2 is a denial of the allegations in the plaint and also that the Suit is barred by limitation.

4. The Munsif gave a decree to the plaintiff holding that the suit was not barred by limitation. The defendant thereupon appealed to the District Judge, before whom it was contended on behalf of he plaintiff that the Schedule 3, part 1, Clause 1, of the Bengal Tenancy Act has no application to his suit, inasmuch as the defendant No. 2 was an under-tenant while the Schedule applied only to tenure-holders and raiyats.

5. The lower Appellate Court held that the position of an under-tenant was in no way different from that of the tenant for the purposes of the limitation as provided by the above Schedule of Bengal Tenancy Act. That Court further held that conceding the contention of the plaintiff to be correct the suit was barred by Article 32, Schedule II, of the Limitation Act. That Court, on the above finding, allowed the appeal and dismissed the suit.

6. The plaintiff has now appealed to this Court. The only question that requires our decision is whether the plaintiff's suit is barred by limitation or not.

7. The present suit was instituted purely u/s 155 of the Bengal Tenancy Act. This section provides that the suits for ejectment on the ground (a) that the tenant has used the land in a manner which renders it unfit for the purposes of the tenancy, or (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to be ejected, is entertainable only on a notice on the tenant. It appears from the plaint itself that the plaintiff treated his suit as coming u/s 155 of the Act (see paragraph 6th of the plaint).

8. The difference between the two Sub-sections (a) and (b) is this. Under Clause (a) what is necessary is that the land should have been used in a manner which renders it unfit for the purposes of the tenancy, whether there is or is not any contract as to the manner of the use of the land. Clause (b) refers to a breach of a condition mentioned in the contract. In either of these two cases the tenant is liable to be ejected. The defendant No. 2 has done both.

9. What the plaintiff's case is, is indicated in paragraph 4 of the plaint in which he says, after stating the misuse of the land of the tenancy by the defendant No. 2, that:

This has caused great loss and mischief to the plaintiff. The defendant No. 2 took settlement of the land for his own agricultural purposes; but he has made it quite unfit for the purpose for which he took the jote settlement.

10. The finding of the lower Appellate Court is that the land of the tenancy was misused by the defendant No. 2 and in coming to that finding, the lower Appellate Court observed that it had no doubt the plaintiff knew of the misuse for more than two years before the time when he instituted the suit and his suit was, therefore, barred by limitation by Article 32, Schedule II, of the Limitation Act.

11. On behalf of the plaintiff-appellant, it was urged that Article 143 was applicable. This Article provides that a suit for possession of Immovable property should be instituted within 12 years from the time when the forfeiture is incurred or condition broken, when the plaintiff has become entitled by reason of any forfeiture or breach of condition. I am of opinion that this Article has no application to the present suit, which is not for possession of Immovable property but which is against the defendant No. 2 for ejectment, who having a

right to use the property for specific purposes perverted it to other purposes. For the latter class of cases the limitation is provided by Article 32 of the Schedule. And the limitation so provided is two years from the time when the perversion first becomes known to the person injured thereby.

12. In the Fall Bench case of Sharoop Dass Mondal v. Joggessur Roy Chowdhry 26 C. 564 : 3 C.W.N. 464 it was held that in a suit brought by a landlord against a tenant where the primary relief sought was a mandatory injunction directing the defendant to fill up a tank excavated by him in contravention of the terms of the tenancy and to pay damages to the plaintiff for his wrongful act, and where the secondary relief sought was ejectment, and where the defence (inter alia) was that the suit was barred by limitation, inasmuch as it was brought more than two years after the excavation of the tank, that Article 32, Schedule II, of the Limitation Act (XV of 1877), applied to the case and the suit was barred by limitation.

13. The above is a clear authority on the subject. I am, therefore, of opinion that the plaintiff's suit is barred by limitation and that the lower Appellate Court rightly dismissed it. The appeal in, therefore, dismissed with costs.

Newbould, J.

14. I agree.