

(1916) 06 AHC CK 0005

Allahabad High Court

Case No: None

Ganga Dei

APPELLANT

Vs

Niadar Singh

RESPONDENT

Date of Decision: June 30, 1916

Citation: (1916) ILR (All) 676

Hon'ble Judges: Walsh, J; Sundar Lal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Walsh, J.

This case has been thoroughly argued. But really the point is hardly open to discussion. The plaintiff sues to recover from the defendant certain money which has been received by the defendant, in the form of "rent paid to the defendant through the court under a decree entitling the defendant to receive such rent as against the tenants, but in respect of property of which the plaintiff was entitled to the possession, and also to the receipt of the rents. It is suggested that for such an action the Limitation Act provides one year's limitation by reason of the terms of article 29, that is to say, that it is an action for compensation for wrongful seizure of movable property under legal process. It is nothing of the kind. The moment one appreciates the distinction between tort and contract all difficulty disappears. Assuming for a moment that such money can be movable property, it is obvious that it has never been in the possession of the plaintiff at all. Compensation for wrongful seizure is another way of stating a claim for damages for tort in detinue or trespass. There can only be wrongful seizure when the property was in the possession of the person who is setting up the wrong. An action for detinue involves the proof of a right to actual possession, and of a deprivation of possession. In the case now before the court there was no seizure; there is no tort, that is to say, there is nothing wrongful in the sense in which it is used in the article; there is no claim for compensation, and I very much doubt whether rents payable under these

circumstances are movable property at all. It is quite clear that money received by B from a third person, to which A is rightfully entitled, is money which, from the date of its receipt by B, B is under an implied contract to pay to A. The cause of action which A has for that implied contract has always been known to the common law as an action for money had and received by the defendant to the use of the plaintiff. That is what the present suit is really for, and Article 62 of the first schedule to the Limitation Act is the appropriate article. I think the case of Jagjivan Javherdas v. Gulam Jilani Chaudhri I.L.R (1883) Bom. 1 was wrongly decided.

2. The appeal must be dismissed with costs.

Sundar Lal, J.

3. I am of the same opinion.

4. The appeal is dismissed with costs.