

(1915) 11 AHC CK 0015

Allahabad High Court

Case No: None

Nirbhai Sinha and Others

APPELLANT

Vs

Tulsi Ram

RESPONDENT

Date of Decision: Nov. 13, 1915

Citation: AIR 1915 All 393(1) : 31 Ind. Cas. 804

Hon'ble Judges: Piggott, J

Bench: Single Bench

Judgement

Piggott, J.

This was a suit by a usufructuary mortgagee to recover possession on the allegation that the defendants-mortgagors had never given, him possession over the mortgaged property in accordance with the terms of the contract. The suit was; brought within six years of the date from which the mortgagee was to have received possession. Profits were claimed for the entire period of six years. The only question discussed in the Courts below was as to the amount of the said profits. A point of limitation is raised in second appeal to this Court it being contended that the suit was governed; so far as the claim for profits was concerned, by Article 109 of the First Schedule to the Limitation Act (Act IX of 1908). The mortgage-deed is registered and in my opinion, the claim for profits was in substance one for compensation for breach of a contract in writing registered and subject to the period of limitation prescribed by Article 116. I can find no authority to the contrary and the view which I have taken, seems to have been assumed in the cases of Balgobind Das v. Barkat Ali (1888) A.W.N. 15 and Collector of Mirzapur v. Dawan Singh 30 A. 400 : (1908) A.W.N. 160 : 5 A.L.J. 486. The only other plea taken, in the memorandum of appeal, assails the, finding of the lower Appellate Court as to the amount of the annual profits which the plaintiff was entitled to recover. I think the appellants are up against a finding of fact on this point with which I cannot interfere. The appeal, therefore, fails and I dismiss it with costs, including fees on the higher scale.