

(1909) 05 CAL CK 0006

Calcutta High Court

Case No: None

Nabin Chandra Baruah and
Others

APPELLANT

Vs

Chandra Madhab Baruah

RESPONDENT

Date of Decision: May 14, 1909

Judgement

Coxe, J.

This was a suit for an account and other reliefs brought by the plaintiffs on the allegation that the defendant was in charge of a certain forest mahal which belonged jointly to him and them; that his agency terminated in Magh 1308 and that thereafter he had failed to render accounts. A number of issues were laid down for trial, but the suit has been disposed of by the Subordinate Judge of Dhubri on the preliminary point that it is barred by limitation. The plaintiffs appeal.

2. The Subordinate Judge observes: " The whole trend of evidence goes to show that defendant merely acted as an agent for collection purposes." It has been sought to show that the profits from the present mehal were to be devoted exclusively to the purpose of paying off debts incurred in litigation. But it is proved that they were applied to the discharge of other obligations of a joint nature. The defendant's position appears to have been that of a collecting agent, and this being so, the law applicable to the case seems to be that laid down in Section 30 of Act VIII of 1869." The section to which the learned Subordinate Judge refers enacts that suits for recovery of money-in the hands of an agent may be brought within one year after the determination of the agency. In construing the section, however, I think we must pay some regard to the Act of which it forms part. No one I think can contend that this section would apply to the case of agent employed by a moneylender or business man who had no connection or dealings with land at all. The Act is called "The Landlord and Tenant Procedure Act, 1869." Its preamble states that it was enacted because it was expedient to amend the procedure in suits between landlords and tenants in Bengal. It seems to me therefore that although the term agent" is not defined in this Act, we must take it to mean a man who is employed as

an agent by a landlord as a landlord who is employed to assist a landlord in his dealings with tenants and for the purpose of carrying on the business of a landlord as a landlord. Now it appears that in this case the profits of the forest mahal in suit are derived exclusively from the sale of timber and forest produce. There are no tenants on the land and the forest produce is sold to purchasers between whom and the owners of the forest mahal there exists no relationship of landlord and tenant whatever. In my opinion, therefore, if the defendant looked after the sale of timber on behalf of the plaintiffs, as it is clear he did, supervised the business of selling to outsiders, and credited, the sale-proceeds either to the joint debts of the family or other purposes, he was not an agent: within the meaning of Section 30 of the Landlord and Tenant "Procedure Act, 1869.

3. The learned pleader for the respondent relies on Section 24 of Act X of 1859. This act was superseded in the District of Dhubri by Act VIII of 1861. Section 30 of the latter Act is almost identical with Section 33 of Act X of 1859, and Section 33 of Act X should evidently be read in conjunction with Section 24. Section 24 enacts that suits by zamindars and others in receipt of rent of land against any agent employed by them in the management of land or collection of rents shall be cognizable by the Collectors. It appears to me that this section does not help the respondent much. It may perhaps be conceded, though with some reservation, that the defendant in this case was employed for the management of land. But the section refers to suits brought by zamindars and others in receipt of rent of land; in other words, it contemplates suits which are brought by landlords as landlords who are entitled to rent from tenants. A suit brought by the owner of land, but not in his capacity as landlord and not in "connection with any dealing" with tenants would not seem to be contemplated by this section. Here the fact that the plaintiffs are owners of land seems to be of little importance. They sued the defendant simply because he managed their property for them, and it made no difference to their suit whether they held a proprietary interest in the lands. In my opinion, therefore, we are not justified in holding that the present suit is one such as is contemplated by Section 30 of Act VIII of 1869.

4. Accordingly I think that the limitation prescribed in Section 30 of Act VIII of 1869 has no application to the present suit, and that the decision of the Subordinate Judge on this preliminary point should be set aside. The suit will be remitted to him under Order XLT, Rule 23 for determination.

5. The costs will abide the result.

6. We certify that the appellants are authorised to receive back the full amount of the fee paid on the memorandum of appeal.

Richardson, J.

7. I entirely agree. I do not think that the provisions of Section 30 of Act VIII of 1869 are applicable to this forest mahal which is also styled in the pleadings a sayarat

mahal. Generally speaking of the provisions embodied in such Acts as the Act referred to, Act X of 1859 and the present Tenancy Act are applicable to land which is used or let for agricultural or horticultural purposes. See the case of Durga Sundari Dasi v. Bibi Umdatanissa 9 R.L.R. 101 : 18 R.W. 234. Such a provision as that contained in Clause 4 of Section 23 of Act X of 1859 appears to me to be a special provision for the recovery of arrears of rent and so far as the clause deals with suits for arrears of rent on account of any rights of pasturage, forest rights etc., it corresponds to the law now contained in Section 193 of the Bengal Tenancy Act. It does not follow that because there is a provision in the earlier Act relating to suits for the recovery of arrears of rent on account of forest rights, every provision of the Act (including for instance the provisions for the acquisition of occupancy rights) is applicable to the forest mahal with which we are concerned in the present case.