

(1925) 08 CAL CK 0007

Calcutta High Court

Case No: None

Jogendra Nath Maiti and Others

APPELLANT

Vs

Bhagabat Das and Others

RESPONDENT

Date of Decision: Aug. 26, 1925

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: AIR 1926 Cal 378

Judgement

1. The plaintiffs, opposite parties, instituted a suit for recovery of possession of land valued at Rs. 2,800 and mesne profits tentatively valued at Rs. 1,200, the total value being Rs. 4000. A decree was passed for possession with a direction for determination of mesne profits at a further stage of the suit. "The mesne profits were subsequently ascertained and the trial Court gave a decree for Rs. 5,116-8-0 with interest thereon. The defendants appealed to the District Judge while the plaintiffs appealed to this Court valuing their appeal at Rs. 5,500. The plaintiffs then applied to the District Judge for dismissal of the petitioners' appeal on the ground that the appeal lay to the High Court and not to the District Judge. While the application of the plaintiffs was pending before the District Judge, the petitioners submitted an application on the 20th July last to us to decide the question of the forum of appeal, and if it was held that the appeal lies to this Court then to treat the application as one u/s 5 of the Limitation Act. The application was ordered by this Court to be kept pending until the decision of the question by the District Judge.

2. The District Judge on the 29th July last held relying upon the Full Bench decision in the case of Ijijatulla v. Chandra Mohan [1907] 34 Cal. 954, that the appeal lies to this Court as the land had been valued at Rs. 2,800 and the mesne profits which had been tentatively valued in the plaint at Rs. 1,200, had been found to be Rs. 2,300, the total being Rs. 5,100.

3. Our attention has been drawn to the, case of [Bidyadhar Bachar and Others Vs. Manindra Nath Das and Others,](#) . That case, however, related to mesne profits pendente lite. In the present case mesne profits were claimed prior to the suit and it is thus governed by Full Bench decision in Ijjatullah"s case [1907] 34 Cal. 954. It is to be noted that Ijjatulla"s case [1907] 34 Cal. 954, was not referred to in the judgment in the later Full Bench decision: [Bidyadhar Bachar and Others Vs. Manindra Nath Das and Others,](#) .

4. We accordingly hold that the appeal lies to this Court. We think, however, that there was sufficient cause for not presenting the appeal in this Court in time, and we accordingly direct that the appeal be admitted though out of time. The petitioners however must pay costs to the opposite party one gold mohur.