
(1868) 06 CAL CK 0004

Calcutta High Court

Case No: Special Appeal No. 2848 of 1867

Mozaffur Ally

APPELLANT

Vs

Girish Chandra Das

RESPONDENT

Date of Decision: June 24, 1868

Judgement

Loch, J.

The objection must, we think, be allowed. The rulings of this Court, to which the Judge alludes, go no further than this: that where a plaintiff is barred on the face of his own plaint, an Appellate Court is justified in raising the issue, although it has never been raised below. This refers to cases where a plaintiff sues for arrears of rent for 6 years, or for wassilat for 12, and such like, where the very recital of the plaint shows a considerable portion of the relief sought, to be impossible under the limitation laws. Now, in this case, the plaintiff asked for two kinds of relief. He wished to have the survey award altered, and also to be restored to possession of his land, the two wrongs not having been done at one and the same time, but at a considerable interval. Thus the survey award was made on the 23rd of September 1863 whilst the plaintiff dates his dispossession from the 14th of January 1864.

2. If the plaintiff had come into Court merely to ask for the concealment of the survey award, he would have been obliged to bring his suit within three years of that award; but his claim to be restored to possession of land from which he had been subsequently dispossessed, would be an entirely different cause of action, and one that would be governed not by Clause 6, Section 4, Act XIV of 1859, but by Clause 12, Section 1¹ of that Act. He would have, that is to say, twelve years to bring his suit.

3. This, we remark, was the view the defendant took of the plaint, for he raised the issue of twelve years" limitation, which the Principal Sudder Ameen tried. The Judge's order must be reversed with costs (of this appeal) on the special respondent, and the case be remanded for trial on its merits, and the costs will follow the result.

¹Limitation of 12 years (sic) suits for immoveable property.

[Cl. 12, Sec. 1:--To suits for the recovery of immoveable property or of any interest in immoveable property to which no other provision of this Act applies the period of twelve years from the time the cause of action arose.]