

(1869) 06 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. 701 of 1869

Bhuli Sing and Others

APPELLANT

Vs

Mussamut Nehmubhu

RESPONDENT

Date of Decision: June 14, 1869

Judgement

Glover, J.

In this matter I am compelled to differ with my brother Kemp, and with the learned Judges of other Division Benches. I need not say therefore that my opinion is come to with much diffidence. It appears to me that malikana is in the nature of rent. It represents the profit of the proprietor derived from the rents of his estate, and was so understood apparently by Government at the time of the perpetual settlement. In Regulation VIII of 1793, section 44, malikana is called "an allowance in consideration of proprietary rights," and farmers are directed (section 45) to pay it monthly according to the "kistbandi fixed for the Sudder jumma." Payment of malikana was enforced in the same manner as arrears of rent (section 46).

2. Malikana therefore has all the elements of rent. It represents the profit which the proprietor would ordinarily receive from the letting of his land, if he continued in occupation thereof, and as the recipient never ceases to be proprietor, although the lands may have been let in lease to others, what he receives as malikana seems to me never to cease to be rent.

3. If it be rent, then as it is due only at certain times of every year, failure to pay, must, I suppose, be considered as giving a continually recurring cause of action and enable a proprietor to receive all arrears of malikana that may not be barred by the Statute; in the present case, for instance, the proprietor would be able to recover back dues for 6 years.

Kemp, J.

This is a suit to recover malikana. The Judge found that the plaintiff had not been able to prove receipt of any malikana during a period of twelve years prior to suit.

The suit of the plaintiff was therefore dismissed as barred. I am of opinion that this decision is correct under the rulings of this Court in *Mussamut Ozerun v. Baboo Heranund Sahoo* 7 W.R. 336, *Seranund Sahoo v. Mussamut Ozerun* 9 W.R. 102, and *Badarul Huqq v. The Court of Wards* 10 W.R. 302. The appeal is dismissed.