

(1878) 05 CAL CK 0003

Calcutta High Court

Case No: None

Brojendro Coomar
Ray and Others

APPELLANT

Vs

Rakhal Chunder Ray
and Others

RESPONDENT

Date of Decision: May 23, 1878

Citation: (1878) ILR (Cal) 791

Hon'ble Judges: R.C. Mitter, J; Maclean, J

Bench: Division Bench

Judgement

R.C. Mitter, J.

In this case we think that the lower Appellate Court has taken a correct view of the law of limitation applicable to the facts about which there is no dispute between the parties.

2. The rent claimed is of the year 1276 (1869-1870), and the present suit has been brought in Magh 1282 (January 1876), so that if the rent claimed became due in the year 1276 (1869-1870), the present suit not having been brought within three years from the last; day of that year, is clearly barred u/s 29 of the Rent Act.

3. It has been said that it did not become due in that year, because in 1275 (1868-1869) a notice for enhancing the rent of the defendants' tenure was issued, and a suit for the recovery of enhanced rent mentioned in the aforesaid notice was brought in Assar 4277 (July 1870); that this suit was finally decided against the plaintiff's by the High Court on the 19th Jaist 1280 (2nd June 1873). The plaintiffs' contention is, that the rent of the year 1276 (1869-1870) at the old admitted rate became due on the dismissal of the enhancement suit. We do not think that this contention is correct. It is clear that, notwithstanding the notice of enhancement, the plaintiffs, if they chose to do so, could have successfully sued the defendants in the year 1277 (1870), and recovered the rent claimed in this suit. Therefore, it follows that the rent claimed in this case became due in 1276 (1869-1870).

4. The decision of the lower Appellate Court is correct, and the special appeal is accordingly dismissed with costs.