

(1880) 05 CAL CK 0006

Calcutta High Court

Case No: None

Khetturpaul Sritirutno
and Another

APPELLANT

Vs

Kedarnath Nag

RESPONDENT

Date of Decision: May 21, 1880

Citation: (1881) ILR (Cal) 34

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Tottenham, J.

The appellant in this case holds a jumma in the estate of the Sobha Bazar Rajah, the late Sir Radha Kant Deb Bahadoor, of which estate the plaintiffs are trustees.

2. By his lease the defendant was prohibited from digging any tank in his holding without the permission of his lessor. He has, however, excavated a tank, and built pukka ghats, converting the surrounding lands into a garden.

3. The plaintiffs brought this suit to compel him to fill up the tank, and to restore the land to its original state, or, should he fail to do so, to make him pay them Es. 715 as compensation.

4. The defendant pleaded limitation, and further, that the tank was excavated with the knowledge and permission of the former executors of the estate, who also made no objection at the time the work was done. The first Court finding that the tank was made at least four years previous to the suit, held, that the plea of limitation was established, because it thought that the suit came under Article 32 of the second schedule of the Act, which prescribes two years as the period for a suit against a person for perverting property to purposes other than the specific purpose for which he has a right to use it. On the merits, the first Court held, that the defendant had failed to make out that he had obtained any permission to excavate; but at the same time held that the long silence of the plaintiffs and their

predecessors, who had quietly allowed the defendant to lay out money in improving the property, implied acquiescence on their part. It considered that, in equity, the plaintiffs were entitled to no relief; and dismissed the suit.

5. The Appellate Court was of opinion that the suit did not come under Article 32 of the Limitation Act, but under Article 116, which gives a period of six years. It, therefore; overruled the Munsif's decision that the suit was barred by limitation.

6. On the merits, the Appellate Court held, that the defendant had wrongly broken the conditions of his lease, and that he could not be allowed to plead that he had improved the land, or that his lessors had taken no steps to restrain him at the time he made the tank. The Court gave the plaintiffs a decree, by which the defendant was ordered to fill up the tank within six months or in default to pay to the plaintiffs a sum of Es. 300.

7. The defendant, in this second appeal, contends, that the lower Court was wrong in overruling the plea of limitation; that, under the circumstances, the plaintiffs were not entitled, after so long a period, to an order for the filling up of the tank again with earth, and that, at any rate, no more than nominal damages should have been awarded.

8. As to limitation we think with the lower Appellate Court that Article 32 does not apply to this case. It seems to us to fall under Article 120, which gives a period of six years. The subsequent portion of the judgment, in, which certain equitable considerations arising in the case are discussed, is not relevant for the purpose of this report. A decree for nominal damages was given.)

[Art. 32:

Description of suit.	Period of limitation.	Time from which period begins to run.
Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two years. ...	When the perversion first becomes known to person injured thereby.