

Mohim Chunder Pal Chowdhry Vs Mirza Ahmad Ali Khan

Court: Calcutta High Court

Date of Decision: April 8, 1915

Acts Referred: Bengal Tenancy Act, 1885 " Section 153
Civil Procedure Code, 1908 (CPC) " Section 102, 115

Citation: 33 Ind. Cas. 346

Hon'ble Judges: Newbould, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

Asutosh Mookerjee, J.

This is an appeal by the defendant in a suit framed, in the alternative, for recovery of rent or of damages for use

and occupation. The sum claimed is less than Rs. 100. It is obvious that the appeal is incompetent. If it be treated as a suit for rent, the appeal is

barred u/s 153 of the Bengal Tenancy Act, as none of the special questions mentioned therein has been decided by the decree. If, on the other

hand, the suit is treated as one for damages for use and occupation, it is barred u/s 102 of the Code of Civil Procedure: Kunjo Behary Singh v.

Madhub Chundra Ghose 23 C.884. Whichever view may be taken of the nature of the suit, the appeal cannot consequently be entertained. The

appeal is accordingly dismissed.

2. We have been invited, however, to interfere with the decree of the Subordinate Judge in the exercise of our revisional jurisdiction. But it is plain

that the provisions of Section 115 cannot be applied to this case. The Subordinate Judge had jurisdiction to hear the appeal preferred to him and

to reverse the decision of the Primary Court, If he has committed an error of law, that does not constitute a valid ground for interference by this

Court in the exercise of its revisional powers. It is immaterial that the alleged error touches the question of limitation. The Subordinate Judge has

decided, though possibly erroneously decided, the question of limitation which he was called upon to consider: Sundar Singh v. Dora Shankar 20

A. 78 : A.W.N. (1897) 168; Ramgopal Jhoonjhoonwalla v. Joharmall Khemka 15 Ind. Cas. 547 : 39 C. 473. The position might have been

different if he had decreed the suit without a decision upon the question of limitation: Kailash Chandra Halder v. Bissonath Paramanic 1 C.W.N.

67. The application for revision must consequently be refused.

3. This decision, it is conceded, will govern the other appeals and applications, on which similar orders will be drawn up.