

**(1915) 04 CAL CK 0022**

**Calcutta High Court**

**Case No:** None

Mohim Chunder Pal Chowdhry

APPELLANT

Vs

Mirza Ahmad Ali Khan

RESPONDENT

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**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

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### **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 Haldar 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.