

**(1910) 03 CAL CK 0053**

**Calcutta High Court**

**Case No:** None

Gangadhar Marwari and Others

APPELLANT

Vs

Lachman Singh and Others

RESPONDENT

**Date of Decision:** March 18, 1910

**Acts Referred:**

- Court Fees Act, 1870 - Article 11
- Limitation Act, 1963 - Article 109, 178

**Citation:** 6 Ind. Cas. 125

**Hon'ble Judges:** Sharf-ud-din, J; Brett, J

**Bench:** Division Bench

### **Judgement**

1. A preliminary objection has been taken to the hearing of this appeal on the ground that the Court-fee paid on the memorandum of appeal was insufficient and that the appellant ought to have paid ad valorem Court-fees on the value of the mesne profits which were claimed by the opposite party. The objection appears to us to be based on a misunderstanding; for, it appears that, in the present case, the application for mesne profits was not made by the plaintiffs in the original suit but was made by the defendants against whom the suit had been dismissed by way of restitution u/s 583 of the Code of Civil Procedure. The application would, therefore, appear to be one falling under the provisions of Section 244, Clause (e), of the CPC and under the Notification of the Government of India No. 4650, dated the 10th September 1889, the fee chargeable on an appeal from such an order will be limited to the amount chargeable under Article 11 of the second schedule of the Court Fees Act of 1870. We are, therefore, unable to hold that the preliminary objection can prevail.

2. In the appeal itself, the main question which has been raised is the plea of limitation. The appellants contend that the application for mesne profits was barred by limitation under the provisions of Article 178 of the second Schedule of the

Limitation Act, because it was not made within three years from the 15th June 1905, the date of the decision of this Court by which the suit brought by the present appellants against the respondents was dismissed. It has been contended on behalf of the appellants that the right to mesne profits by way of restitution u/s 583, Criminal Procedure Code, accrued from the date of the decision of this Court, and, therefore, the application ought to have been made within three years from that date. In fact, the application was not made till the 22nd September 1908. It appears, however, that, after the decision of the case by this Court, the present respondents first applied for restoration to possession of the land from which, it is alleged, they had been dispossessed and an order for restoration to possession was passed on the 1st November 1905 and possession was, in fact, delivered on the 9th November 1905. It is contended on behalf of the respondents that the right to mesne profits must be held to have accrued from the date when possession was restored to them. We think that this contention must prevail and, having regard to the provisions of Article 109 of the second Schedule of the Limitation Act, which, however, apply not to applications like the present but to suits for recovery of mesne profits, we must hold that the right to recover those profits accrues from the date when the person dispossessed is restored to possession. It is clear that the right to mesne profits up to the 9th November 1905, could not be claimed until the respondents were restored to possession. In our opinion, therefore, the plea of limitation taken in support of the appeal fails and we hold that the application for mesne profits was not barred by limitation as it was made within three years from the date when possession of the property was restored to the respondents.

3. The result, therefore, is that the appeal is dismissed with costs. We assess the hearing fee at two gold mohurs.

Civil Rule No. 3859 of 1909.

4. The Rule is discharged as it has become infructuous. We make no order as to costs.