

(1909) 12 CAL CK 0036**Calcutta High Court****Case No:** None

Syed Mohamed Mehdiasan Khan
and Another

APPELLANT

Vs

Phul Kuar Mahton and Others

RESPONDENT

Date of Decision: Dec. 16, 1909**Judgement**

1. In our opinion this appeal should be dismissed. The learned Vakil for the appellants has applied for leave to withdraw the appeal and we do not think it would be fair to the other side to grant that prayer. The only point taken in support of the appeal is whether the action was barred by the statute of limitation. The action was for a declaration that it might be declared that the rent payable by the defendants was Rs. 24-14-6 and not Rs. 17-9-3 which appeared on the record-of-rights. There was also a prayer that the entry in the record-of-rights might be declared to be incorrect. The record-of-rights was published on the 25th June 1901. The present suit was brought on 5th September 1906, but that was not brought by the present appellants. He was substituted on the 11th April 1909, that is to say, after the time allowed by the statute of limitation.

2. It is argued that the cause of action namely a declaration for the amount of rent is a continuing cause of action, but we are unable to take that view. We think that the right for a declaration arose when the contrary assertion was first made.

3. Then with regard to the prayer that the entry in the record-of-rights may be declared to be incorrect, the Full Bench case Abdul Rahman v. Amir Ali 11 C.W.N. 521 : 34 C. 612 : 5 C.L.J. 486 : 2 M.L.T. 312 (F.B.), is binding on us. The substitution in this case was not done within the time allowed by Section 22 of the Limitation Act. The suit being barred, this appeal in consequence must be dismissed with costs.