

(1918) 02 CAL CK 0040

Calcutta High Court

Case No: None

Parsuram Mahajan

APPELLANT

Vs

Bhal Chandra Shaha and Others

RESPONDENT

Date of Decision: Feb. 11, 1918

Citation: AIR 1919 Cal 980(1) : 44 Ind. Cas. 719

Hon'ble Judges: Syed Shamsul Huda, J; Greaves, J

Bench: Division Bench

Judgement

1. This is an appeal from the judgment of the Subordinate Judge of Assam Valley Districts, affirming a decision of the Munsif of Barpeta. The plaintiff sued to recover a sum of Rs. 832 which he had paid to the defendant for the purchase of some land of which he was put in possession by the defendant. The plaintiff, however, obtained no registered conveyance for the land. Afterwards a suit was brought by the defendant and the plaintiff lost possession of land. Under these circumstances, the plaintiff brought the present suit to recover the amount of the purchase money which he had paid to the defendant, namely, the sum of Rs. 832. Two questions arise in this appeal. First, it is said that both the lower Courts are wrong in holding that Article 62 of the Limitation Act is not applicable to the case. The lower Appellate Court has found that the Article applicable is Article 97 and the Munsif found that the article applicable was Article 95. It is not necessary for us to consider whether, in fact Article 95 is applicable here because we are of opinion that the decision of the lower Appellate Court that Article 97 and not Article 62 is applicable, is correct. The money was paid by the plaintiff to the defendant on the 10th July 1906. On the 26th August 1912 possession was decreed in the defendant's favour in the suit to which we have clearly referred and on the 27th August 1912 the present suit was commenced. In our opinion it is clear that the time when the limitation commenced to run was the date of the failure of the consideration, that is to say, the time when the plaintiff was deprived of what he had bargained for, namely, possession of the land, or, in other words, limitation began to run from the 26th August 1912. This suit was accordingly brought within time and the proper Article was applied by the lower

Appellate Court. So far as the second point is concerned, namely, that there should have been an account taken of the profits made by the plaintiff while in possession of the land, we think the lower Appellate Court has dealt quite rightly with this matter. The defendant was in possession of the purchase-money until the same was returned. The plaintiff paid the Government revenue for the land during the time he was in possession, and we think, therefore, that the lower Appellate Court rightly dismissed the defendant's appeal with regard to this. The result is that the appeal fails and must be dismissed with costs.