

(1877) 06 CAL CK 0008

Calcutta High Court

Case No: None

Grish Chunder Roy
and Another

APPELLANT

Vs

Boydonath Bag

RESPONDENT

Date of Decision: June 21, 1877

Citation: (1878) ILR (Cal) 26

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

As regards the question of the tenure being protected from enhancement, I do not think that there is any ground for interfering. As regards the other point, the facts seem to be that several persons, members of a joint family, were the owners of this tenure. Some of these persons brought a suit for rent at an enhanced rate. It was objected in the course of the suit that it was wrongly framed, because all the members of the family interested in the tenure were not joined; thereupon the other members of the family came in and expressed their assent to the suit. I take it that what was then done amounts to this,--that although no formal order was then drawn up, still the suit was from that time a suit by all the members of the family. That is how the lower Appellate Court treats it, and that is how we treat it. Now this being a suit for which a very short period of limitation is provided, it turned out that these parties who were subsequently added as plaintiffs were so added after this period of limitation had expired; and under the provisions of Section 22, Act IX of 1871, if after institution of a suit a new plaintiff is added, the suit, as regards him, must be deemed to have been commenced when he was made a party. Therefore, there is no resisting the argument that, as regards the persons who were subsequently added, the suit was commenced after the period of limitation had expired. But then it is said, that for that reason the suit should be dismissed altogether. That really amounts to this, that because two of the parties who joined were barred, therefore the whole are also barred. The law does not say that; and it is

not at all a reasonable construction of the statute to hold that. No doubt, it is difficult to see in what cases of a joint claim Section 22 could have any application at all. But I can see no more difficulty in drawing up the decree in this case than there would be in the case in which some of the holders of the tenure, who had refused to join in the suit, might be made defendants. In that case the decree could not be in favour of any person except the plaintiff, nor can there be a decree here in favour of the plaintiffs who are barred; but, nevertheless, the other plaintiffs are entitled to a decree for the rent at the rate fixed by the Court. The claim for rent not being divisible, the decree must be for the whole rent.

2. It seems to me, therefore, that the decree of the lower Appellate Court is right, and this special appeal ought to be dismissed with costs.

Prinsep, J.

3. As far as I understand the case, the landlords of the defendants are four brothers. Two of them sued the defendants for arrears of rent. An objection was then raised that all the brothers ought to have sued jointly. Thereupon the other two brothers signified to the Court that they had consented to this action having been brought by two plaintiffs. And I understand from that that the two plaintiffs intended to represent the entire estate, and brought the suit as managers of a Hindu family for themselves and their brothers; and that it was only when they became alarmed on an objection raised by the defendants that the other two thought it necessary to come in and signify their consent. The objection as to defect of parties, after the case had passed through two Courts, would not in my opinion be one affecting the merits of the case so as to be a point to be taken in special appeal u/s 372.

4. As regards the other objection on the point of limitation, I cannot see how a claim of two of the brothers for rent at an enhanced rate could be separated from the claim of the two others. The Limitation Act does not appear to have contemplated such a case as that; and it would be impossible to specify the particular shares of joint owners in such a case. The proper course, in such a case, would have been for the first Court to have thrown out the case for defect of parties. The first Court did not do so, but proceeded to decide it. That being so, I think, in special appeal, we cannot do otherwise than dismiss the appeal.