

(1879) 05 CAL CK 0014

Calcutta High Court

Case No: None

Ram Hari
Chuckerbutty

APPELLANT

Vs

Kallida Pershad Dutt

RESPONDENT

Date of Decision: May 5, 1879

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 141

Citation: (1880) ILR (Cal) 317

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

We think that the Judge is right in the view he took of the question of limitation.

2. The suit as framed was not one coming under the provisions of Section 27 of the Rent Law. The zamindar appears not to have come forward in his own name to interfere with the cultivation of one of his tenants, but to have proceeded by the agency of other persons, who now say he had given a lease without notice to the plaintiff. Where a landlord does not directly take steps to interfere with the rights of cultivation of his tenant, but does so through other persons, whose acts he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law.

3. The other questions to be considered in this case are, whether the Judge. was right in treating this tenure as one which was transferable by sale, and in receiving the receipts put forward by the plaintiff as evidence in the case. It is unnecessary for us to go into the question of what tenures are transferable by sale without the consent of the zamindar, because we find that the Judge has confirmed the decision of the first Court, and from the judgment of the first Court it appears that there had been possession by the plaintiff under the alleged transfer for a period of twenty

years without any interruption before the disturbance which has given rise to the present suit.

4. Under these circumstances it must be taken, that the transferability of this particular tenure has been recognized, and there being evidence of possession by the plaintiff within twelve years, the admissibility of the receipts is not material. Apparently the Judge ought not to have acted upon these receipts, nor indeed should they have formed part of the record, until proved in some way, as they were not admitted. Section 141 provides that documents shall not be put up with the record until they are proved or admitted. This provision, no doubt, was not to be found in the former Code of Procedure, but the rule of practice was the same under that Code, and the declaration contained in the new Code has merely embodied that which was an established rule in the Courts before. But if it was the duty of the Judge to pass over these documents as unproved, it was equally the duty of the pleader of the party, against whom they were intended to be used, to insist that they should not remain on the record at all.

5. The appeal is dismissed with costs.