

(1869) 05 CAL CK 0042

Calcutta High Court

Case No: Special Appeal No. 3165 of 1868

Gobind Kumar Chowdhry

APPELLANT

Vs

Hargopal Nag and Others

RESPONDENT

Date of Decision: May 25, 1869

Judgement

Bayley, J.

I am of opinion that the judgment of the Judge below is incorrect, and must be reversed. The facts are these: the plaint in this case, together with an amount of money sufficient to cover the proper stamp duty, was presented before and accepted by the Assistant Collector, who was the proper authority to try the case in the Revenue Court, on the 29th Chaitra 1274, or 10th April 1868, that being Good Friday. The suit was for arrears of rent for 1271-72-73, B.S.

2. The points for our consideration are, firstly, whether when the plaint was filed on the Good Friday on which day the Revenue Courts are authorized by certain Circular Orders (to be found at page 157 of the Rules of the Board of Revenue edited by Mr. Chapman) to close the Court, the reception of that plaint on that day was or was not illegal so as to bring the plaintiff's case within the law of limitation; secondly, whether the plaint not being duly engrossed on stamp paper, but accompanied with an amount of money sufficient to cover the stamp duty, was properly put in, so as to save the plaintiff's suit from the operation of the Statute of Limitation; thirdly, whether the three years within which suits for arrears of rent are to be instituted is to be reckoned from the last day of the Bengal year during which the arrears claimed shall have become due, or the dates of recognized instalment falling due. This last objection refers to the rents of the year 1271 only. On the first and second points we think that when it is admitted that the plaintiff was in time, if the plaint could be legally received on the 10th of April; and when it is admitted that the Assistant Collector did receive both the plaint and the full proper amount of stamp duty at the same time and himself certified to that fact, there was nothing illegal in that proceeding, and therefore the plaint was filed in time, so as to prevent the law of limitation from barring the suit. There is no law by which the Revenue Courts can

specify certain days on which plaints shall not be received. There is only this Circular Order of the Board of Revenue which is not law, and it merely authorizes the Revenue Courts to close the Courts on certain days specified in that order, and on no other. In this view we think that the acts of the Assistant Collector in receiving the plaint and in receiving the amount of stamp fee necessary for the plaint, were acts not illegal, or rendering plaintiff's suit liable to be barred by limitation as not filed in time. The third objection taken in appeal, viz., that the time is to be calculated within three years from the date of the instalments paid, is entirely futile, for the law on this point, section 32, Act X of 1859, is quite clear, and provides that such suits for arrears are to be instituted within three years from the last day of the Bengal (or other) year in which the arrear claimed shall have become due. In this view we reverse the decision of the lower appellate Court, and affirm that of the first Court, with costs in this Court and in the lower appellate Court.