

(1880) 03 CAL CK 0012

Calcutta High Court

Case No: None

Hirdaynarain and
Others

APPELLANT

Vs

Hurmuzi Begum and
Others

RESPONDENT

Date of Decision: March 4, 1880

Acts Referred:

- Limitation Act, 1963 - Article 132

Citation: (1879) ILR (Cal) 921

Hon'ble Judges: Richard Garth, C.J; Maclean, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that there is no difficulty about the point which has been raised in these appeals. We have been referred by the appellants' pleader to certain cases which were decided under the Limitation Act of 1859. [See Hurnand Shoo v. Mussamut Ozeem (9 W.R. 102), Gobind Chunder Rai v. Ram Chundra (19 W.R. 95), and Bhuli Singh v. Mussamut Nehmu Bebee (3 B.L.R. App. 102; affirmed on appeal 4 B.L.R. A.C. 29). But those cases turned upon the particular language of Clause 12, Section 1 of the Act of 1859, which seemed to make it imperative upon the Courts to deal with malikana as an interest in land, and to treat a claim for it as barred if not made within twelve years after the last receipt by the proprietor.

2. But the present case is governed by the Limitation Act of 1877, which, like its predecessor, Act IX of 1871, has made special provision for cases of this kind. Article 132 of schedule ii expressly provides that malikana, as well as other sums charged upon Immovable property, may be sued for within twelve years, not from the time of the last payment of the malikana, but "from the time when the money suel for becomes due."

3. Now malikana is an annual recurring charge, and it is quite clear that the sums sued for in this case became due within twelve years of the commencement of this suit, and consequently that the Court below was right in giving the plaintiffs a decree.

4. Both appeals therefore (Nos. 43 and 70) are dismissed with costs.