

(1902) 06 CAL CK 0028

Calcutta High Court

Case No: Appeal from Appellate Decree No. 205 of 1900

Swarnamoyee Debi

APPELLANT

Vs

Hari Das Roy

RESPONDENT

Date of Decision: June 2, 1902

Judgement

1. In our opinion, this appeal must succeed. The suit was for contribution by one of two co-sharers in a certain holding and it was based upon the allegation that the Plaintiff who represents a two-third interest in the holding had paid the whole of the rent for which the Defendant was jointly liable with him for a period extending from the year 1889 to 1892. Payment of the rent appears to have been made in four instalments, the 1st on the 15th of April 1895, the 2nd on the 20th of May 1895, the 3rd on the 17th of June 1895, and the 4th on the 15th July 1895. The defence raised in the Courts below was, so far as it is now material, that the Defendant having been kept out of possession wrongfully by the Plaintiff during the period for which the rent paid by the latter was due and he having during that period enjoyed the profits appertaining to the Defendant's 1/3rd share in the holding, which ought rightfully to have come into the hands of the Defendant, was not entitled to contribution. The Courts below have overruled that contention and given the Plaintiff a decree. At the same time, it has been held by them that the facts relied upon by the Defendant by way of defence have been established. As a matter of fact, the Plaintiff was for the period in question in wrongful possession of the whole sixteen annas of the holding to the exclusion of Defendant from her 1/3rd share and this being so, we think the view taken by the Courts below was wrong. It seems to us that the provisions of sec. 69 of the Indian Contract Act, upon which the Plaintiff founds his right of suit, are not applicable to such a case as the present. That section, we think, contemplates a case in which there are several co-sharers in possession of land and where some of them having neglected to pay what is due from them in respect of the occupation of the land, one of their number pays what is due from all. He may then recover contribution from the rest. But, here, the Plaintiff sues to recover what he had, by the wrongful appropriation of the profits of the Defendant's share, already received, for on the finding of the Courts below, we must take it that he was in the receipt of these during the whole of the period in

question. It would be unjust and inequitable that, under such circumstances, he should be allowed now to come into Court to be re-imbursed in respect of payments made with what was virtually the Defendant's own money.

2. Another point was raised in this Court, which, however, was not taken in the Courts below, namely, that the suit was barred by limitation. We have had some hesitation in allowing the Appellant, under the circumstances, to go into the question. We think, however, that upon the dates which his learned vakil has given us and which are not disputed by the other side, that the case is so clear that we may venture, without injustice to the other side, to express an opinion upon the question. The case is governed by Art. 61 of the second schedule of the Limitation Act, and the suit was instituted on the 16th of July 1898. As has been already observed the latest of payment upon which the Plaintiff founds his claim was made on the 13th of July 1895, that is to say, one day in excess of three years prior to the date on which the suit was instituted. This being so, we think that the suit fails not only on the first ground to which we have referred, but also on the ground that it is barred by limitation. We accordingly reverse the decrees of the Courts below and dismiss the suit with costs in all Courts.