

(1866) 09 CAL CK 0013

Calcutta High Court

Case No: Regular Appeal No. 41 of 1866

Doyamoyee Chowdrainee and
Another

APPELLANT

Vs

Bholanath Ghose and Others

RESPONDENT

Date of Decision: Sept. 12, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

Section 32 of Act X of 1859 provides that suits "for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year or from the last day of the month of Cheyt of the Fuslee or Willayuttee years in which the arrears claimed shall have become due;" and s. 30, Act X of 1859, enacts that, "except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action." If this is a suit for the recovery of arrears of rent, and if the case falls within s. 32 of Act X, it is barred. But it is contended that the cause of action did not accrue until the decree in the declaratory suit was passed, and that the case consequently falls within s. 30. Two conflicting cases are referred to: first, Joymonee Dossee v. Hurronath Roy 2 W.R., Act X Cases, 51; second, Hurronath Roy v. Gooroodoss Biswas 3 W.R., Act X Cases, 19.

2. The question is whether this is a suit for arrears of rent, or upon some other cause of action. But for the former of the two cases which have been cited, I should have thought it clear that a decree declaring that the plaintiff had a right to enhance was not a cause of action. The non-payment of the rent at the enhanced rates, and not the declaration of a Civil Court that plaintiff had a right to enhance, was the cause of action. The action for that cause might have been brought if the decree had not been obtained. A suit for arrears of rent at an enhanced rate, after notice, may be brought without first obtaining a decree in a declaratory suit that the plaintiff has a right to enhance. Section 14, Act X of 1859, says-- "Any under-tenant or ryot on whom such notice as aforesaid has been served may contest his liability to pay the enhanced rent demanded of him, either by complaint of excessive demand of rent

as hereinafter provided, or in answer to any suit preferred against him for recovery of arrears of the enhanced rent;" and Regulation V of 1812 (the Regulation which was in force before Act X of 1859 was passed) also allowed the land-owner to sue for rent at an enhanced rate after notice, without previously obtaining a decree declaring that he had a right to enhance. The decree in the declaratory suit may be used in evidence between the same parties, but it cannot constitute a cause of action. A decree in a suit instituted in 1859 declaring that the plaintiff had a right to enhance could not constitute a cause of action in respect of the rent for 1860. If a doubt existed whether the defendant held under a tenure liable to enhancement of rent or not it might be well to settle the question once for all by a declaratory suit. But there could be no decree in that suit which would hind the tenant to pay, or the landlord to receive, a particular rate for ever, whatever might be the rates for adjoining lands or the value of the produce or productive powers of the land in time to come.

3. Parties are often, I regret to say, put to much unnecessary expense and delay by these declaratory suits. There was no necessity in this case to bring a suit for declaration of the right to enhance, at least the arrears claimed might have been sued for without such a suit or a decree pronounced on it. The non-payment of the rent was the cause of action. The suit was for arrears of rent at an enhanced rate. Section 32 was the rule of limitation applicable, and s. 30 did not apply. Even if one year was the period of limitation, the decree in 1864 was not the cause of action, and the one year did not run from the date of that decree.

4. With regard to the rent for 1859 and 1860, which became due after Act X came into operation, the suit is clearly barred, whether the Limit was three years under the first part or three months under the last part of the section. Probably three years was the period, as the notice of enhancement was not given under s. 13, Act X. As to the arrears for 1264 and 1265, or 1857-1858, the following part of s. 32 is applicable:-- "For arrears of rent due at the passing of this Act, the suit shall be brought within three years after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court, whichever may first expire." The period of three years from the date of the passing of the Act expired in April 1862, and consequently, as to arrears for 1857-1858, the suit was barred when brought on the 9th August 1865.

5. We think that the ruling in the second of the two cases cited was the correct one. This appeal will be dismissed with costs.

¹ See Beng. Act VIII of 1869, s. 29. *Ranee Surno Moyee v. Shooshee Mukhi Barmani*, 2 B.L.R., P.C., 10; *Ishan Chunder Roy v. Khaja Asanoolla*, 8 B.L.R., 537; [Dindayal Paramanik Vs. Radhakishori Debi and Others](#) .