

(1880) 12 CAL CK 0019

Calcutta High Court

Case No: None

Horakh Narain Singh

APPELLANT

Vs

Ram Dutt Singh

RESPONDENT

---

Date of Decision: Dec. 18, 1880

Acts Referred:

- Limitation Act, 1963 - Article 99

Citation: (1881) ILR (Cal) 549

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

---

### Judgement

Mitter, J.

This is a suit to recover Rs. 439-6, being money paid by the plaintiff, between September 1866 and August 1878, as revenue of Mouza Tulsipore, belonging to defendant, with interest thereon. The plaintiff held the other mouzas of the defendant's estate under baibilwafa and lease, by the conditions of which he was to pay the revenue of them, there being no obligation on him to pay the revenue of Tulsipore. But his allegation is, that the defendant neglected to pay the revenue of Tulsipore, and that he, the plaintiff, was, therefore, compelled to do so.

2. The defence was, first, that, by Article 99, Schedule ii, Act XV, 1877, the plaintiff's suit was wholly barred; second, that the plaintiff paid the revenue of Tulsipore by arrangement, receiving a corresponding reduction of his rent. This last plea was decided against the defendant in both the lower Courts, and although allusion is made to it in the last ground of appeal, it has not been mooted-before us. Both the lower Courts have held that Article 132, and not Article 99, Schedule ii, applies on the authority of Enayet Hossein v. Muddun Moonee Shahoon 14 B. L. R. 155; S.C. 22 W. R. 411 and Deo Nandan Ojha v. Musst. Didhun Bisnath Koer (Sp. Ap., No. 1913 of 1876, unreported). Before us it is again urged, that Article 99 applies, that Article 132 does not, and that the plaintiff is not entitled to interest and to a declaration of lien on the mouza.

3. We think Article 99 has no application to the case, the plaintiff having paid the money, neither under a decree nor as a joint proprietor of the estate. The plaintiff is undoubtedly entitled to recover the money u/s 9, of Act XI of 1859, and he might also, under that section, have retained his lien on the other mouzas of the estate till his money had been paid. He is equally entitled to recover his money u/s 69\* of the Contract Act, and we think that the liability, to pay the revenue was not merely a personal liability of the defendant, but was also a liability imposed upon the defendant's estate.-Mothooranath Chuttopadhya v. Kristo Kumar Ghose (I. L. R. 4 Cal. 369).

4. As regards the period of limitation, we are unable to distinguish the case from Deo Nandan Ojha v. Musst. Dulhun Bisnath Kooer (Sp. Ap., No. 1913 of 1876, unreported); and we, therefore, concur in thinking that Article 132 applies. We see no reason why the plaintiff should not recover interest on the money, nor do we object to his obtaining a declaration that the money is recoverable by sale of Mouza Tulsipore, though it would have been better if he had asked for recovery by sale of the entire estate.

5. The appeal will, therefore, be dismissed with costs.