

(1868) 01 CAL CK 0009

Calcutta High Court

Case No: Regular Appeal No. 29 of 1867

Jamal Ali

APPELLANT

Vs

Lall Doss and Others

RESPONDENT

Date of Decision: Jan. 31, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to us to be very clear that when a mortgagor, after a mortgage has been satisfied, sues for the recovery of the property mortgaged, the case comes within cl. 15, s. 1, Act XIV of 1859. But when he sues for surplus collections which have been received by the mortgagee, then the case falls under cl. 16. It has been said that a mortgagee, after the mortgage has been satisfied, is in the position of a trustee for the mortgagor. We think he is not a trustee within the meaning of s. 2 of the Act. But even if he can be called a trustee, he is a trustee of the description falling within cl. 15, s. 1, and not a trustee of the description referred to in s. 2. We do not think it likely that the Legislature could have intended that a mortgagor, whose case is provided for by cl. 15, s. 1, and who is thereby limited to thirty years, should have the election of treating the mortgagee as a trustee, and saying that he comes within s. 2 and is barred by no length of time.

2. According to the decision of the Division Bench, the plaintiff will be entitled to a decree for Rs. 2,616 with costs in proportion. In other respects, the decree of the lower Court will stand.