

Ram Saday Mukerjee and ors. Vs. Dwarka Nath Mukerjee

Ram Saday Mukerjee and ors. Vs. Dwarka Nath Mukerjee

SooperKanoon Citation : sooperkanoon.com/855021

Court : Kolkata

Decided On : Apr-18-1895

Reported in : (1895)ILR22Cal644

Judge : Pigot and ;Stevens, JJ.

Appellant : Ram Saday Mukerjee and ors.

Respondent : Dwarka Nath Mukerjee

Judgement :

Pigot, J.

1. In this case a decree was made in a suit instituted under the Bengal Tenancy Act on the 26th May 1890, ordering the sum of Rs. 400 on account of rent claimed in the suit to be paid in the month of Sraban following, that is to say, the following August. We think there is no doubt upon the face of the decree that the suit was brought under the Bengal Tenancy Act; and although the decree was had by consent, that makes, we think, no difference upon the question arising before us.

2. On the 9th August 1893 an application for execution was made, and it was contended that the application was barred by limitation under the provisions of Article 6, Part III, Schedule HI of the Bengal Tenancy Act, inasmuch as more than three years had passed since the date of the decree at the time when the application was made for execution, on the 9th August 1893, The First Munsif of

Bankura accepted the contention that was raised, and dismissed the application; and on appeal his order was affirmed by the Officiating District Judge.

3. It is contended in appeal before us that, notwithstanding the express words of Article 6 of the Limitation Schedule of the Bengal Tenancy Act, those words should be so read as to cause limitation to run, not from the date of the decree or order, but from the date fixed by the decree for the payment of the sum mentioned in it, and authorities are cited before us [Sakharam Dikshit v. Ganesh Sathe I.L.R. 3 Bom. 193, Lakshmibai Bapuji Oka v. Madhavrav Bapuji, Oka I.L.R. 12 Bom. 65 and one or two cases of this Court] relating to the provisions of former Limitation Acts as affecting similar questions.

4. We do not think it necessary to enter upon a discussion of the authorities that were cited to us, and for this reason. The result of the light thrown upon the effect of the successive Limitation Acts by the decisions of the Courts was the enactment of the Act of 1877, Article 179. In Article 179 a period of three years was allowed for the execution of a decree or order of any Civil Court not provided for by No. 180, or by the Code of Civil Procedure, Section 230, and there are various periods fixed in that article according to circumstances from which the three years so provided shall run. The first is the date of the decree or order; and this and the second and third are incorporated in Article 6, Part III, Schedule III of the Bengal Tenancy Act; and there are three others which are not so incorporated; and the last of these three, namely, the 6th, provides for a case where a certain date is fixed by the decree for the payment of the money decreed, that is to say, where the application is to enforce any payment which the decree or order directs to be made at a certain date, from such date the three years are to run. Now the Limitation Act of 1877 is referred to in Article 6 of the Limitation Schedule of the Bengal Tenancy Act. It is obvious that the Legislature in framing the schedule of limitation for the Bengal Tenancy Act, had Article 179 before it, and we must suppose that the Legislature deliberately abstained from making, in the Tenancy Act, any provision such as is contained in the sixth paragraph of the third column of Article 179 of the Limitation Act of 1877, that is to say, that having before it the question whether or not the three years' limitation should run from a date fixed by the decree for the payment of the decretal money (where the decree was in that

form), the Legislature deliberately abstained from making any such provision, and fixed the date of the decree or order as the date from which the three years were to run. Under these circumstances we see no alternative save to construe the words 'the date of the decree or order' in their natural sense, and to hold that whatever hardship or inconvenience might arise in some cases from the three years' limitation running from the date of the decree and not from the date, if such there be, on which the decree directs the payment to be made, that is the law, and the appellant's contention cannot succeed.

5. We have not thought it necessary to base our decision upon the Full Bench decision in *Mamtazul Hug v. Nirbhai Singh* I.L.R. 9 Cal. 711, although no doubt the construction of the words of the section of the Act of 1869, which is there adopted, coincides with the construction which we feel bound to give to the words of the Bengal Tenancy Act Limitation article in the present case. But we think what we have said is enough to show that by the terms of the Bengal Tenancy Act we are completely bound to come to the decision at which we have arrived.

6. We therefore dismiss the appeal with costs.