

of the grant, deals with it as if it had the effect of an estoppel, and finding that it did not work as an estoppel, he does not take any further notice of it. These appear to us to be serious errors in the decision, and considering that the Judge altogether disagreed with the finding of the Munsif as to the question of possession by cultivation for a period of thirty years or, at least, more than twelve years, it seems to us evident that the Judge had not correctly appreciated the importance of the inquiry on this point to the plaintiffs. We think, therefore, that the judgment of the lower Appellate Court should be set aside, and the case must go back to the lower Appellate Court for a proper trial, after careful consideration of the observations that I have made. The costs of this appeal will follow the result.

1880

GUDADHUR  
PAUL  
CHOWDHRY  
&  
BHYRUB  
CHUNDER  
BHUTTA-  
CHARJI.

*Appeal allowed and case remanded.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclean.*

HURMUZI BEGUM AND OTHERS (DEFENDANTS) v. HIRDAYNARAIN  
AND OTHERS (PLAINTIFFS).\*

1880

March 4.

*Malikana, Suit for—Limitation Act (XV of 1877), sched. ii, art. 132.*

Malikana is an annual recurring charge on immovable property, and may be sued for within twelve years from the time when the money sued for becomes due.

THE plaintiff, the purchaser of a seven-anna share of the malikana rights in a certain mouza, on the 23rd February 1878 sued the defendants, the purchasers of the remaining nine annas share of the malikana, to recover from them the malikana due on his seven annas share for the years 1281 to 1284 F. S. (1873 to 1877), (the malikana of the whole sixteen annas, as far as could be collected from the plaint, having been collected by the defendants.) The defendants pleaded limitation, contending that

\* Appeal from Appellate Decrees Nos. 43 and 70 of 1879, and appeal from Orders Nos. 6 and 7 of 1879, against the decree of Baboo Bolae Chand, Officiating Second Subordinate Judge of Bhagalpore, dated the 14th of September 1878, affirming the decree of G. C. Lewis, Esq., Munsif of Monghyr, dated the 22nd May 1878.

1880

HURMOZI  
BEGUM  
v.  
HURDAY-  
NARAIN.

more than twelve years had elapsed since the last payment of malikana had been made.

The Munsif held that the suit was not barred, the plaintiffs having brought this suit for the years 1281—84.

The defendants appealed to the Subordinate Judge, who dismissed the appeal.

The defendants appealed to the High Court.

Baboo *Siligram Singh* for the appellants.

Mr. *R. E. Twidale* for the respondents.

The judgment of the Court (GARTH, C. J., and MACLEAN J.) was delivered by

GARTH, C. J.—We think that there is no difficulty about the point which has been raised in these appeals. We have been referred by the appellants' pleader to certain cases which were decided under the Limitation Act of 1859. [See *Hurnand Shoo v. Mussamut Ozeem* (1), *Gobind Chunder Rai v. Ram Chandra* (2), and *Bhuli Singh v. Mussamut Nehmu Bebee* (3).] But those cases turned upon the particular language of cl. 12, s. 1 of the Act of 1859, which seemed to make it imperative upon the Courts to deal with malikana as an interest in land, and to treat a claim for it as barred if not made within twelve years after the last receipt by the proprietor.

But the present case is governed by the Limitation Act of 1877, which, like its predecessor, Act IX of 1871, has made special provision for cases of this kind. Article 132 of sched. ii expressly provides that malikana, as well as other sums charged upon immoveable property, may be sued for within twelve years, *not from the time of the last payment of the malikana, but "from the time when the money sued for becomes due."*

Now malikana is an annual recurring charge, and it is quite clear that the sums sued for in this case became due within twelve years of the commencement of this suit, and consequently that the Court below was right in giving the plaintiffs a decree.

Both appeals therefore (Nos. 43 and 70) are dismissed with costs.

*Appeals dismissed.*

(1) 9 W. R., 102.

(2) 19 W. R., 95.

(3) 3 B. L. R., App., 102; affirmed on appeal, 4 B. L. R., A. C., 29.