

interest would not fall due till the end of the year. The parties are bound by that decision. Therefore no portion of the claim for 1286 is shown to have accrued due on the 27th Joist 1286, when the first suit for damages was brought. This part of the claim is, therefore, not affected by the provisions of s. 43.

The plaintiff has taken objection to the finding of the lower Court as to the amount of damages, but we are of opinion that there is no valid ground for impugning the correctness of the lower Court's decision upon this point.

We, therefore, reverse the decree of the lower Court so far as it relates to the years 1284 and 1285, and dismiss the plaintiff's suit for these years. The decree of the lower Court in respect of the year 1286 is confirmed. The plaintiff will pay and receive costs in both Courts in proportion to the claim dismissed and decreed.

*Decree modified.*

*Before Mr. Justice Mitter (Officiating Chief Justice) and Mr. Justice Norris.*

GUNESH DASS (PLAINTIFF) v. GONDOUR KOORMI (DEFENDANT)

*Breach of Contract in Planting Trees on Land let for Agricultural Purposes—*  
*Beng. Act VIII of 1869, s. 27—Act X of 1869—Limitation Act (XV*  
*of 1877), sched. ii, art. 120.*

Section 27 of Beng. Act VIII of 1869 only relates to such suits as could be brought either by the landlord or tenant under Act X of 1869, and will not apply to an alternative claim, put forward in a suit for ejectment, to compel the defendant to remove trees from certain lands leased to him for agricultural purposes. Article 120 of sched. ii of Act XV of 1877 is applicable to such claims.

THIS was a suit brought on the 13th Bysack 1286 (19th April 1879) to eject the defendant from two plots of land, on the ground that he had committed a breach of contract in planting trees on this land which had been leased out to him for agricultural purposes only.

Appeal from Appellate Decree, No. 925 of 1881, against the decree of H. W. Gordon, Esq., Officiating Judge of Tirhoot, dated the 28th February 1881, affirming the decree of Baboo Birj Mohun Persad, Munsif of Durbhanga, dated the 27th December 1879.

1882

SHEO SHUN-  
KUR SAHOY  
v.  
HRIDOY  
NARAIN.

1882

July 19.

1882  
 GUNESH  
 DASS  
 v.  
 GONDOUR  
 KOORMI.

The plaintiff alleged that the trees were planted on plot No. 1 in 1284 F. S. (1876-7), and on plot No. 2 in 1281 F. S. (1873-4), and he asked that the defendant might be ejected, or in the alternative that the defendant might be compelled to remove the trees.

The defendant pleaded limitation, contending that the trees were planted on plot No. 1 in 1282 F. S. (1874-5), and on plot No. 2 in 1274 F. S. (1866-7).

The Munsif found that the suit in respect of plot No. 2 was barred by limitation, more than twelve years having elapsed since the trees were planted; but as regards plot No. 1 he held, that the suit was in time, and therefore gave the plaintiff a decree, ejecting the defendant from plot No. 1, and ordering the removal of the trees.

Both the plaintiff and the defendant appealed to the District Judge. The Judge dismissed the plaintiff's appeal and decreed that of the defendant, directing the dismissal of the whole of the plaintiff's suit as being barred by s. 27 of Beng. Act VIII of 1869.

The plaintiff appealed to the High Court.

*Baboo Taruck Nath Palit* for the appellant.

*Baboo Pran Nath Pundit* for the respondent.

The judgment of the Court (MITTER, Offg. C. J., and NORRIS, J.) was delivered by

MITTER, Offg. C.J.—This was a suit brought by the plaintiff to eject the defendant from two plots of land constituting his holding. The suit was based upon the ground that, under a contract, or according to the custom of the country, the defendant was bound to use the land of his holding for agricultural purposes only; but that the defendant, in contravention of this condition, planted trees upon the land in dispute, and converted it into a garden.

The plaintiff alleged that this planting of trees took place in October 1876. The suit was brought on the 19th of April 1879. The plaintiff in his plaint sought for two reliefs. He

asked first for the ejection of the defendant, and if the defendant was not liable to be ejected, he next asked in the alternative that the defendant should be compelled to remove the trees planted by him.

As regards one of the plots in dispute the Munsif found that the planting of the trees had taken place more than twelve years before the date of this suit. He accordingly dismissed the plaintiff's suit in so far as it related to this plot. But with reference to the other plot he found that the trees were planted on it within twelve years from the date of the suit, and that, therefore, the suit was not barred by limitation. Upon the merits the Munsif finding that the plaintiff's allegation was made out, awarded a decree in his favour.

Against that decree, which was partly in favor of the plaintiff and partly in favour of the defendant, both the plaintiff and the defendant appealed to the District Judge.

The District Judge dismissed the plaintiff's appeal and decreed that of the defendant, directing the dismissal of the whole of the plaintiff's suit, on the ground that it was barred by limitation under the provisions of s. 27 of Beng. Act VIII of 1869. He came to this conclusion, because, on the face of the plaint, the suit was brought more than one year after the alleged planting of trees.

Section 27 of Beng. Act VIII of 1869 only relates to such suits as could be brought either by the landlord or tenant under Act X of 1859. The claim of the plaintiff so far as it seeks to eject the defendant was a claim which was cognizable under Act X of 1859, and therefore we are of opinion that the decision of the District Judge, so far as it disallows the claim of the plaintiff for ejection of the defendant, is correct.

But s. 27 of Beng. Act VIII of 1869 will not apply to that part of the plaintiff's claim in which he seeks to compel the defendant to remove the trees, because a suit of that nature was not cognizable under Act X of 1859. Therefore, so far as that part of the plaintiff's claim is concerned, the decision of the lower Appellate Court is not correct.

Then the question arises, what article of the Limitation Act of 1877 governs this part of the plaintiff's claim?

1882

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 GUNESH  
 DASS  
 v.  
 GONDOUR  
 KOORMI.

1882

GUNESH  
DASS  
v.  
GONDOUR  
KOORML.

It was contended on behalf of the defendant that art. 31 of sched. ii of that Act applies.

We are clearly of opinion that this contention is not correct, and we are supported in this opinion by the decision in the case of *Kedar Nath Nag v. Sritirutno* (1). In our opinion art. 120 governs this part of the plaintiff's case; and the lower Appellate Court will have to determine whether it is barred under that article or not.

We, therefore, set aside the decision of the lower Appellate Court so far as it dismisses the plaintiff's claim to compel the defendant to remove the trees, and remand this case to that Court for retrial with reference to that relief. The costs will abide the result.

It is admitted that the appeals, numbered from 926 to 933 both inclusive, will be governed by this decision. The same order will be made in those cases also.

*Case remanded.*

*Before Mr. Justice Mitter (Officiating Chief Justice) and Mr. Justice Norris.*

EDUN (DEFENDANT) v. MAHOMED SIDDIK AND OTHERS (PLAINTIFFS).

1882

July 19.

*Suit to compel Registration—Registration Act (III of 1877), ss. 73, 77.*

Under the Registration Act of 1877, a suit to compel registration is maintainable only when the provisions of s. 77 of the Act have been complied with. A person omitting to make an application to the Registrar as provided by s. 73, within the time provided by s. 72, cannot be said to have complied with the conditions precedent to a suit under s. 77. Independently of ss. 77 of the Act, no suit will lie.

*Bhagwan Singh v. Khuda Baksh* (2) followed.

*Ram Ghulam v. Chotey Lal* (3) dissented from.

THIS was a suit to compel the defendant to register a certain mokurari lease granted to the plaintiff on the 27th of January 1880. The plaintiffs alleged that they filed the lease in the Sub-

Appeal from Appellate Decree, No. 672 of 1881, against the decree of H. Beveridge, Esq., Officiating Judge of Patna, dated the 27th January 1881, reversing the decree of Baboo Kedarnath Roy, Third Munsif of Patna, dated the 11th August 1880.

(1) L. L. R., 6 Cal., 34.

(2) L. L. R., 3 All., 397.

(3) L. L. R., 2 All., 46.