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Registration Act, the Registrar also refused to register. That order was made on the 4th of May 1899. The appellant, as is found by the Lower Court, instead of coming to the Civil Court under section 77, within the thirty days prescribed by that section, applied to the Registrar for a review, and on the dismissal of that application on the 24th of June 1899 instituted the present suit on the 20th of July of the same year.

[535] The question is, *first*, whether section 14 of the Limitation Act applies to the present case, and *secondly*, if so, whether, having regard to the nature of the application to the Registrar, the case came in within that section.

In my opinion the provisions of the Limitation Act do not apply to the present case. This case is governed in principle by the Full Bench case of *Nogendra Nath Mullick* v. *Mathura Mohun Parhi* (1), which is binding upon us. It is true that the decision there was in relation to another Act, and not under the Registration Act, but the same principle applies. That case was followed in the case of *Veeramma* v. *Abbiah* (2), where the matter was thoroughly gone into in a very careful judgment of that Court, and the same view was adopted. This decision is precisely in point, because it is in relation to the Registration Act which is now under discussion. The same view was in substance held by a Division Bench of this Court in the case of *Girija Nath Roy Bahadur* v. *Patani Bibee* (3). The appellant relies upon a case, *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha* (4), but, with every deference to the Judges who decided that case, I do not think that it can stand beside the Full Bench case (1) of this Court, to which I have referred. It is a feature in that case that section 6 of the Limitation Act, which is of the highest importance in deciding this question, is not even referred to by either of the learned Judges who decided that case ; and that case did not meet with the approval of the Judges who decided the case of *Girija Nath Roy Bahadur* v. *Patani Bibee* (3). It is reasonably clear upon the authorities to which I have referred, and in which I concur, that the Limitation Act has no application to the present case, and the appeal must be dismissed with costs.

MITRA, J. I concur.

Appeal dismissed.

30 C. 536.

[536] APPELLATE CIVIL.

GOPAL CHUNDER MANDAL *v.* BHOOBUN MOHUN CHATTERJEE.*
[8th January, 1903.]

Mesne profits, assessment of—Landlord and tenant, combined possession of—Costs.

Where the position of the plaintiff is that of landlord and tenant combined, and the defendant, a sub-tenant, notwithstanding a notice served upon him under s. 167 of the Bengal Tenancy Act, withheld possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the defendant, and not upon the basis of the rent which the rightful owner had been realising from the tenants, before dispossession.

[Rel. on 35 Cal. 1000=12 C. W. N 650 ; Ref. 12 C. L. J. 285=7 I. C. 197 ; Dist. 5 N. L. R. 97.]

* Appeal from Appellate Decree, No. 1148, of 1900, against the decree of Karuna Das Bose, Subordinate Judge of 24-Pergunnahs, dated March 21, 1900, modifying the decree of Girish Chundra Sen, Munsif of Basirhat dated Aug. 4, 1899.

(1) (1891) I. L. R. 18 Cal. 368.
(2) (1894) I. L. R. 18 Mad. 99.
(3) (1889) I. L. R. 17 Cal. 263.
(4) (1883) I. L. R. 10 Cal. 265.

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SECOND APPEAL by the defendants, Gopal Chunder Mandal and another.

This appeal arose out of an action brought by the plaintiffs to cover mesne profits from the defendants, for the years 1303 to 1305 B. S. to the extent of Rs. 604, for 10 bighas of land from which the plaintiffs had been kept out of possession by the wrongful acts of the defendants. The defence was that the suit was bad for defect of parties, and that the amount claimed was excessive.

The Court of first instance decreed the plaintiffs' suit in a modified form. On appeal to the Subordinate Judge of 24-Pergunnahs, the decision of the first Court was affirmed. The material portion of the learned Subordinate Judge's judgment was as follows: —

"As to the amount of mesne profits, I find that the defendant was not a wrongdoer in the sense in which the word is ordinarily used; he was a *bona fide* tenant, but was evicted in a regular suit after a notice under section 167 of the Bengal Tenancy Act. Then, again, mesne profits are claimed for three years from 1302 B. S., but 1302 was a famine year in Bengal, and some of defendants' witnesses say that there was drought in that year. The lands are, however, *char* lands and yielded some profit, though a full crop was never obtained in 1802. The witnesses on either side gave their own version of the outturn of crops, and taking the figures as given by both sides, it would be safe to take an average, and in this view of the case, I find on calculation, the details of which I need not give here, [537] average profits will be Rs. 11 per bigha, for 10 bighas Rs. 110; and for three years, Rs. 330. The claim of the plaintiff is therefore decreed for Rs. 330, but with full costs in both the Courts. Defendant to bear his own costs."

Babu *Baikuntha Nath Das* for the appellants. The lands in question have always been let out to tenants, and the plaintiffs do not allege that they would cultivate the lands themselves; mesne profits should have been assessed upon the account of rents for which the lands were, or even could be, let out, and not upon the value of the crops raised: see *Bhiro Chandra Mozoomdar* v. *Bamundas Mookerjee* (1), *Huruck Lall Shaha* v. *Sreenibash Kurmokar* (2), *Chardon* v. *Ajeet Singh* (3), *Raghu Nandan Jha* v. *Jalpa Pattap* (4), *Ranee Asmed Kooer* v. *Maharanee Indurjeet Kooer* (5).

Babu *Hara Prasad Chatterjee* for the respondent was not called upon.

BANERJEE AND GEIDT, JJ. In this appeal, which arises out of a suit for mesne profits brought by the plaintiffs-respondents, three questions have been raised by the learned vakil for the defendants-appellants: *first*, whether the Court of Appeal below was right in rejecting the defendants' application for measurement of the land in respect of which mesne profits are claimed; *second*, whether the Court of Appeal below is right in assessing mesne profits according to the value of the crops claimed; and *third*, whether the Court of Appeal below is right in allowing the plaintiffs full costs, instead of costs in proportion to the amount decreed.

Upon the first point we are of opinion that as both the parties went into evidence and the plaintiff's evidence was believed by the first Court, and the decree of the first Court is affirmed by the second Court, it cannot be said that the refusal of the first Court to allow the defendant's application for a local investigation amounted to an error of law, such as would justify our interfering in second appeal. We may add that the

(1) (1869) 3 B. L. R. (A. C.) 88; 11 W. R. 461.
(2) (1871) 15 W. R. 428.
(3) (1869) 12 W. R. 52.
(4) (1897) 3 C. W. N. 748.
(5) (1868) 9 W. R. 445.

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plaintiff, when examined as a witness, said that he had himself measured the land, and that the area is what was stated in the plaint.

[538] Upon the second point, the contention of the learned vakil for the appellant is this, that the lands have always been let out to tenants, and as the plaintiffs do not say they would have cultivated the lands themselves, the mesne profits ought to have been assessed according to the rent at which the lands might have been let out, and not upon the value of the crops raised ; and in support of this contention he refers to that class of cases in which it has been held that where a zemindar is dispossessed of his zemindari and the party wrongfully in possession cultivates the lands and raises crops, mesne profits, should be ascertained, not according to the value of the crops raised by the wrong-doer, but upon the basis of the rent which the rightful owner had been realizing from the tenants, before dispossession.

We are of opinion that the present case is altogether distinguishable from the class of cases referred to above, because here the plaintiff or the landlord bought the tenure or holding of his tenant in which the present defendants had a sub-tenancy. The plaintiffs were therefore entitled, not only to the landlord's right in the land which they had before, but also to the tenant's right which they bought, and to the right to annul the sub-tenancy of the defendants, which they had done, by notice under section 167 of the Benal Tenancy Act. After that notice they became entitled to actual possession ; and if, nevertheless, such possession was withheld from them by the defendant until they were evicted by a decree obtained in a regular suit, they cannot complain if mesne profits are assessed upon the value of the crops raised by them, subsequently to their being served with notice under section 167. The position of the plaintiff here was not merely that of a landlord, but was that of landlord and tenant combined. Mesne profits must, therefore, in our opinion, be assessed on the value of the crops raised.

The first two contentions of the appellants fail.

In our opinion the third contention is entitled to succeed, as there is no reason given by the lower Appellate Court why the costs should not be assessed in proportion. With this modification, the decree of the lower Appellate Court is affirmed, and this appeal dismissed with costs.

Appeal dismissed.

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30. C. 539 (=30. I. A. 114=7. C. W. N. 441=5 Bom. L. R. 421=8 Sar. 374).

[539] PRIVY COUNCIL.

MOHORI BIBEE *v.* DHARMODAS GHOSE.*

[11th, 12th June, and 26th November, 1902 and 4th March, 1903.]

[*On appeal from the High Court at Fort William in Bengal.*]

Minor—Estoppel—Statement known to be false by person to whom it is made—Evidence Act (I of 1872) s. 115—Age, false representation as to—Contract by infants—Contract Act (IX of 1872) ss. 11, 19, 64, 65—Mortgage by minor—Persons competent to contract—Void contract—Advances on mortgage declared invalid, repayment of.

Section 115 of the Evidence Act (I of 1872) does not apply to a case where the statement relied upon is made to a person who knows the real facts and

* *Present* : Lords Macnaghten, Davey and Lindley, Sir Ford North, Sir Andrew Scoble and Sir Arthur Wilson.