be also, I think, a direction to the managers of the *mandir* to render accounts of their management.

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ORIGINAL CIVIL.

Attorneys for the plaintiff : *Wilson & Co.*

Attorneys for the defendants : *S. C. Mookerjee* ; *Manuel & Agarwalla* ; *P. N. Sen.*

32 C. 448=9 C. W. N. 239.

32 C. 459 (=9 C. W. N. 396.)

[459] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Holmwood.

HARI CHARAN FADIKAR *v.* HARI KAR .*

[6th February, 1905.]

Limitation—Suit for damages—Fictitious distress—Standing crops—Limitation Act (XV of 1877), Sch. II, Arts. 29, 36—Immoveable property.

The defendants under fraudulent and fictitious proceedings of distraint between a fictitious landlord and a fictitious tenant, seized standing crops belonging to the plaintiff :—

***Held*, that a suit for damages for the crops so seized, not being specially provided for in the Act, was governed by Art. 36 of Schedule II of the Limitation Act (XV of 1877).**

Standing crops are immoveable property within the meaning of the Limitation Act.

[Appr. 36 Cal. 141 ; Fol. and Ref. 9 C. L. J. 100=12 C. W. N. 1090; Dist. 17 C. W. N. 308=17 C. L. J. 206=18 I. C. 253 ; Ref. 14 M. L. T. 225=25 M. L J. 447=1913 M. W. N. 869=21 I. C. 213 (F.B.) ; 18 N. L. R. 96.]

APPEAL by Hari Charan Fadikar, the plaintiff, under s. 15 of the Letters Patent.

The plaintiff brought the suit in the Court of the Munsif at Tamluk for recovery of damages on the following allegations : That the plaintiff held a certain plot of land under the zemindars, Gopal Lal Seal and others ; the defendant No. 1 having failed in a suit brought by him against the said zemindars to establish his title to the said land, colluded with defendants Nos. 2 to 8 and caused an application for distraint to be made to the third Court of the Munsif at Tamluk in respect of the land by putting forward defendant No. 8 as the malik and defendant No. 9 as the tenant, and in pursuance of the order made thereon the defendants cut away the paddy grown on the land by the plaintiff and misappropriated the same in Agrahayan 1309. The plaintiff alleged that the defendants **[460]** had no right to or interest in the land, and that the defendant No. 9 was an imaginary person.

The defendants Nos. 2 to 8 appeared and filed written statements pleading, *inter alia*, that the suit was triable not by the Munsif but by the Court of Small Causes, that the suit was barred by limitation, that the land belonged to defendant No. 8 and that the defendant No. 9 was the tenant. At the hearing defendants 1 and 2 only appeared ; they disclaimed all interest in the land setting up title in defendants Nos. 8 and 9, and denied having cut the crops.

The Munsif held that the suit came under cl. (j), Art. 35 of the Second Schedule of the Provincial Small Cause Courts Act. On the merits he found in favour of the plaintiff, but he dismissed the suit holding that it was barred by limitation under Art. 2 of the Second Schedule of the Limitation Act.

* **Letters Patent Appeal No. 61 of 1904, in appeal from Appellate Decree No. 1315 of 1903.**

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On appeal by the plaintiff, the Subordinate Judge agreed with the Munsif on the question of jurisdiction and in his findings of fact and observed as follows: "These two appeals arise out of two suits for compensation for fraudulent distraint by fictitious landlord in collusion with fictitious tenant and other persons under colour of which the standing crops grown by the plaintiffs in 1307 in their own lands were sold." He held that the suit was governed by Art. 36, Sch. II, Limitation Act and was within time, the plaint having been filed "within two years from the date of the wrongful removal of *dhan*." He accordingly decreed the plaintiff's suit.

The defendants Nos. 1 to 8 appealed to the High Court. The second appeal was heard by MITRA, J. sitting alone. His Lordship held that the suit was governed by Art. 29 of the Second Schedule to the Limitation Act, and was out of time; the appeal was accordingly decreed and the plaintiff's suit dismissed.

The plaintiff then appealed under sec. 15 of the Letters Patent.

Babu *Krishna Prasad Sarbadhikary* (Babu *Biswa Nath Bose* with him) for the appellant. The suit was not for damages for distraint; there was no relationship of landlord and tenant **[461]** between the plaintiff and the defendants; the alleged distraint was between fictitious landlord and fictitious tenant; in *Jagatjiban Nando Roy* v. *Sarat Chandra Ghosh* (1) relied on by Mitra, J., the relationship of landlord and tenant existed between the plaintiff and defendant, not so in the present case; the writ was not directed against the plaintiff but against the fictitious tenant; Art. 29 does not apply, Art. 36 therefore applies.

Babu *Jogesh Chandra De*, for the respondent. The suit was for damages for distraint; the objection of the defendants that the suit was triable by the Court of Small Causes was overruled by all the Courts on the ground that the suit was under cl. j., Art. 35 of the Second Schedule of the Provincial Small Cause Courts Act: therefore either Art. 28 or Art. 29 applies.

[MACLEAN, C. J. Do not those Articles presuppose that the distress or process must be against the plaintiff? The plaintiff may say "I do not care whether there was distress or process, the whole thing was a fraud."]

A fraudulent distress would necessarily be an illegal distress; if illegal, the Article would apply.

[MACLEAN, C. J. Were the crops standing? In that case it would not be moveable property.

MACLEAN, C. J. The question we have to decide in these appeals is whether Art. 29, Schedule II of the Limitation Act, or Art. 36 applies. The Munsif held that Art. 2 applied: nobody supports that view. The Subordinate Judge has held that Art. 36 applies: the appellant supports that view. Mr. Justice Mitra, sitting alone, has held that Art. 29 applies; from that decision the present appeal is brought. In my opinion, Art. 29 cannot apply. Apart from other reasons, which I need not go into, I think it is sufficient in the present case to say that it is for the defendants, the present respondents; to make out, as they set it up, that this Article does apply. That Article runs as follows:—"For compensation for wrongful seizure of moveable property under legal process." **[462]** Here, what was seized under the so called distress (the whole proceedings apparently have been fraudulent and fictitious from beginning to end—a fictitious landlord, a fictitious tenant, and a fictitious distress) was not moveable but immoveable property. To bring the case under Arti-

(1) (1902) 7 C. W. N. 728.

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cle 29, it is for the defendants to make out that the property seized was moveable property. But there is no evidence to show that. In fact, the finding is just the other way. The Subordinate Judge has spoken of the crops that were seized as "standing crops." There is nothing to show that they were cut when the distress was effected, and it is settled law that standing crops are immoveable, not moveable property within the meaning of the Limitation Act. If that is so, what becomes of Article 29? It is obvious that when the property seized is not moveable property, Article 29 cannot apply. Then, the question is what Article is applicable? I think Article 36. That Article says:—"For compensation for any malfeasance, misfeasance or nonfeasance independent of contract and not herein specially provided for." The case before us is not specially provided for in the Act: so Art. 36 applies, as the case clearly falls within its provisions, and the suit was brought within the two years limited by that Article; so it is not barred by limitation. In my opinion, therefore, the judgment of Mitra J. must be reversed and the decree of the Subordinate Judge restored. I should like to add that if this point had been drawn to the notice of Mr. Justice Mitra, his decision probably would have been different.

The appellant will have his costs in all Courts.

HOLMWOOD J. I agree.

Appeal allowed.

32 C. 463.

[463] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Holmwood.

GOUR CHANDRA SAHA *v.* MANI MOHAN SEN.*

[29th February, 1905.]

Landlord and tenant—Government settlement—Rent, rate of Obligation of under-tenants—Contract with Government—Jamabandi—Regulation VII of 1822, *s.* 9.

On the expiry of the term of a prior settlement the plaintiff took a fresh settlement from the Government of certain lands and contracted with the Government that he would not collect higher rents than are recorded in the settlement papers:—

Held, that that contract would not prevent him from recovering from the defendants higher rents by enforcing a contract which the latter had entered into with him. Section 9 of Regulation VII of 1822 does not render such an agreement illegal.

Section 9, cl. (1) of Regulation VII of 1822 does not preclude the Court from going behind the Collector's *jamabandi*.

Zamir Mandal v. *Gopi Sundari Dasi* (1) followed.

[Ref. 37 Cal. 449; 46 I. C. 98=3 P. L. J. 394.]

* Appeal from Appellate Decree, No. 2630 of 1902, against the decree of Bhuban Mohan Ghosh, Subordinate Judge of Nuddea, dated September 1, 1902, modifying the decree of Shashi Bhusan Sen, Munsif of Chuadanga, dated June 20, 1901.

(1) *Before Sir Francis W. Maclean, K.C.I.E., Chief Justice and Mr. Justice Banerjee.*

ZAMIR MANDAL *v.* GOPI SUNDARI DASI.†

[29th August, 1900.]

MACLEAN C. J. In these cases, there are twenty-two appeals, the plaintiff sues various defendants for the rents of certain chur-lands, upon certain kabuliats.

† Appeals from Appellate Decrees, Nos. 526, 543 to 563 of 1898, against the decree of G. K. Deb, District Judge of Nuddea, dated Dec. 20, 1897, reversing the decree of Satkowri Haldar, Munsif of Kushtea, dated Feb. 16, 1897.