

1869
 JHATU SAEU
 v.
 BABU RAMA
 CHARAN LAL

whether the first attachment was really abandoned or not, if the second attachment was only made at the intimation of the Court that it was necessary, it would in no wise interfere with the first attachment. The Judge says that the execution-creditor delayed to carry on his execution after attachment for eighteen-months. In reality however his delay was only after April 1863, and as the second attachment took place in September 1863 the utmost delay which can be attributed to him is one of four months, duration, and it is possible if the execution proceedings are looked to that it may be found that there was no delay at all attributable to the laches of the judgment-creditor.

Before Mr Justice Bayley and Mr. Justice Hobhouse.

GOBIND KUMAR CHOWDHRY (PLAINTIFF) v. HARGOPAL NAG
 AND OTHERS (DEFENDANTS).*

1869
 May 25.

*Admitting Plaintiff—Holiday—Stamp Duty—Suit for Arrears
 of Rent—Limitation.*

The reception of a plaintiff for arrears of rent by the Collector on Good Friday, although by the Circular Order of the Board of Revenue such day is an authorized holiday, is not illegal.

There is no illegality in the reception of a plaintiff engrossed on insufficient stamp paper if the full amount of the stamp duty has been paid at the time.

Suits for arrears of rent are to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due.

THIS was a suit for arrears of rent for the years 1271, 1272, and 1273, B. S. The plaintiff was filed on the 29th Chaitra 1274 (10th April 1868), this being a Good Friday.

The defendant set up in his defence the deterioration of parts of his holding. The Assistant Collector decreed the case.

On appeal, the Judge held (referring to two cases of the Sudder Dewanny Adawlut, North-Western Provinces, cited in Broughton's Civil Procedure Code, under section 25, Act VIII. of 1859), that a plaintiff could not be presented on a holiday, and if presented it is to be considered as presented on the first day the Court sits after that holiday; consequently as the first open day was the 2nd of Baishakh 1275 (12th April 1868) the claim for the arrears of 1271, B. S. was barred. He accordingly decreed the appeal, and modified the decree of the lower Court.

The plaintiff appealed to the High Court.

Baboo Nalit Chandra Sen for appellant.

Baboo Anand Chandra Ghosal for respondent.

* Special Appeal, No. 3165 of 1868, from a decree of the Officiating Judge of Mymensing, dated the 7th September 1868, modifying a decree of the Assistant Collector of Jambhore of that district, dated the 10th June 1868.

The judgment of the Court was delivered by

BAYLEY, J.—I am of opinion that the judgment of the Judge below is incorrect, and must be reversed.

The facts are these: the plaint in this case, together with an amount of money sufficient to cover the proper stamp duty, was presented before and accepted by the Assistant Collector, who was the proper authority to try the case in the Revenue Court, on the 29th Chaitra 1274, or 10th April 1868, that being Good Friday. The suit was for arrears of rent for 1271 72-73, B. S.

The points for our consideration are, firstly, whether when the plaint was filed on the Good Friday on which day the Revenue Courts are authorized by certain Circular Orders (to be found at page 157 of the Rules of the Board of Revenue edited by Mr. Chapman) to close the Court, the reception of that plaint on that day was or was not illegal so as to bring the plaintiff's case within the law of limitation; secondly, whether the plaint not being duly engrossed on stamp paper, but accompanied with an amount of money sufficient to cover the stamp duty, was properly put in, so as to save the plaintiff's suit from the operation of the Statute of Limitation; thirdly, whether the three years within which suits for arrears of rent are to be instituted is to be reckoned from the last day of the Bengal year during which the arrears claimed shall have become due, or the dates of recognized instalment falling due. This last objection refers to the rents of the year 1271 only.

On the first and second points we think that when it is admitted that the plaintiff was in time, if the plaint could be legally received on the 10th of April; and when it is admitted that the Assistant Collector did receive both the plaint and the full proper amount of stamp duty at the same time, and himself certified to that fact, there was nothing illegal in that proceeding, and therefore the plaint was filed in time, so as to prevent the law of limitation from barring the suit. There is no law by which the Revenue Courts can specify certain days on which plaints shall not be received. There is only this Circular Order of the Board of Revenue which is not law, and it merely authorizes the Revenue Courts to close the Courts on certain days specified in that order, and on no other. In this view we think that the fact of the Assistant Collector in receiving the plaint and in receiving the amount of stamp fee necessary for the plaint, were acts not illegal, or rendering plaintiff's suit liable to be barred by Limitation as not filed in time. The third objection taken in appeal, viz., that the time is to be calculated within three years from the date of the instalments paid, is entirely futile, for the law on this point, section 32, Act X. of 1859, is quite clear, and provides that such suits for arrears are to be instituted within three years from the last day of the Bengal (or other) year in which the arrear claimed shall have become due. In this view we reverse the decision of the lower Appellate Court, and affirm that of the first Court, with costs in this Court and in the lower Appellate Court.

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