

Before Mr. Justice Bayley and Mr. Justice Mitter.

KALI KAMAL MAZUMDAR (DEFENDANT) v. SHIB SUHAI SUKUL
(PLAINTIFF)*

1869
May 6.

*Breach of contract to plant Trees—Ejection—Limitation—Act X of 1859:
s. 30.*

In 1857, the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof, 2,000 betel-nut-trees. The defendant failed to do so.

In 1867, the plaintiff brought the present suit for ejection, on account of the breach of the contract entered into by the defendant.

Held, that by section 30, Act X. of 1859, the suit was barred by limitation.

Boboo *Kishen Dayal Roy* for appellant.

Baboo *Chandra Madhab Ghose* and *Kali Mohan Das* for respondent.

MITTER, J.—This was a suit for the cancelment of a lease, on the ground of an alleged breach of its conditions.

The breach referred to consists in the failure of defendant to plant 2,000 betel-nut-trees within five years from the date of the lease. The lease was executed on the 9th Paush 1264 (1857), and the present suit was brought in 1274 B. S. (1867).

The only question we have to determine in this special appeal is whether the claim of the plaintiff is barred by the Rule of Limitation prescribed by section 30, Act X. of 1859. We are clearly of opinion that it is. There can be no doubt that the plaintiff's cause of action accrued when the breach he complains of actually took place, that is to say, on the 10th of Paush 1269 (1862), and the plaintiff was bound to sue within one year from that date, according to the provisions of the section above cited. This the plaintiff has failed to do.

It has been said that the plaintiff has got an annually recurring cause of action, but there is nothing in the lease to support such a contention, and the pleader for the respondent has failed to show that there is any authority in support of it.

It was next urged that the plaintiff had already taken possession of the property in question, in consequence of the breach above referred to, but that the defendant was restored to possession under a decree passed in a suit instituted by him according to the provisions of clause 6, section 23 Act X of 1859, and it was, accordingly, contended that the plaintiff's cause of action accrued when the defendant was thus restored to possession. This contention is manifestly wrong. The plaintiff cannot be permitted to plead his own wrong, in order to avoid the operation of the Law of Limitation. He had no right whatever to eject the defendant of his own authority, and the Court which decided the suit above referred to, was fully justified in restoring the defendant to possession. It has been further urged that the plaintiff's cause of action is a *continuing* one; but if this were so, the provisions of section 30, Act X of 1859, would become a nullity so far at least as suits of this description are concerned.

This special appeal is accordingly decreed, and the plaintiff's suit is dismissed with costs in all the Courts.

*Special Appeal, No. 3230 of 1868, from a decree of the Judge of Tipperah, dated the 4th September 1868, reversing a decree of the Deputy Collector of that district, dated the 29th June 1868.