

1872
 KRISHNA
 CHANDRA
 SANDYAL
 CHOWDHRY
 v.
 HARISH
 CHANDRA
 CHOWDHRY.

to a right of a malik to engage on the expiry of temporary settlements made of assessed alluvial land, and contiguous to the parent estate of such malik. At least, I am aware of no law or ruling to that effect, and experience is to the contrary. Here indeed, it is clear, the malikana was kept as a deposit to the account of the recorded proprietors of the parent estate whoever they might be. It may be added that, in every one of the temporary settlements in this case, the most clear and distinct reservation of the rights of the proprietors to come in and take the permanent settlement on expiry of the temporary settlement was recorded.

I would also dismiss the special appeals

Appeal dismissed

1872
 March 15

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice L. S. Jackson.

DINDAYAL PARAMANIK (PLAINTIFF) v. RADHAKISHORI DEBI AND OTHERS (DEFENDANTS.)*

Limitation—Act X of 1859, s. 23, cl. 5 ; ss. 32 and 78—Ejectment—Stamp.

The plaintiff had sued the defendant at the end of the year 1272 to recover arrears of rent for 1271, and to eject him for non-payment. The litigation lasted till 1276 when the plaintiff obtained a decree, which however was not executed, as the defendant paid the amount and costs within 15 days. In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. It was held that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years, under s. 32 Act X of 1859.

The plaintiff in this case held a kabuliat from the defendant for a certain piece of land, by which he was entitled, in default of payment of rent, to take possession of the land himself. The defendant fell into arrears at the end of the year 1271 (1864-65), and the plaintiff instituted proceedings under s. 23, cl. 5, and s. 78 of Act X of 1859, for the arrears and for ejectment. This litigation lasted till 1276 (1869-70) in which year the plaintiff obtained a decree for the arrears and for ejectment. The amount of arrears had in the meantime been paid up, and the costs

* Special Appeal, No. 1249 of 1871 from a decree of the Officiating Judge of Nuddea, dated the 21st June 1871, modifying a decree of the Deputy Collector of that district, dated the 16th February 1870.

were paid within 15 days after the decree, and the consequence was that the decree for ejectment was not executed, and the defendant continued in possession. The plaintiff instituted this suit on the 4th Paus̄h 1276 (18th December 1869) to recover the rents from 1272—75 (1865—68) inclusive. It was held by the Courts below that the plaintiff's claim for the year 1272 (1865-66), was barred by the law of limitation under s. 32, Act X of 1859 ; also that the plaintiff was not entitled to ask possession to be given to him by his plaint, unless he put a stamp of adequate value upon it, valuing the suit as one for ejectment. The lower Courts only gave the plaintiff a decree for the arrears of 1273, 1274, and 1275 (1866-67-68).

The plaintiff appealed.

Mr. *Ghose*, for the appellant, contended that the proper construction of s. 32, Act X of 1859, was that the rent for 1272 (1865-66) became due, not at the end of that year, as it would have done if there had not been litigation, but it became due when the tenant satisfied the subsequent decree by payment and prevented ejectment, The tenant virtually renewed his tenancy. A suit for 1272 (1865-66) could not be brought while litigation was pending, and while the decree of ejectment was alive, according to the principle laid down in *Rani Swarnamayi v. Shashi Mukhi Barmani* (1) and *Ishan Chandra Roy v. Khaja Assanulla* (2).

(1) 2 B. L. R., P. C., 10.

(2) *Before Mr. Justice Jackson and Mr. Justice Mookerjee.*

THE facts are fully stated in the judgment of the Court, which was delivered by

The 16th June 1871.

ISHANCHANDRA ROY (DEFENDANT) v.
KHAJA ASSANULLH (PLAINTIFF)*

Baboo *Kali Mohan Das* and *Rames Chandra Mitter* for the appellant.

The *Advocate-General* (with him *Mr. R. E. Twidale* and *Baboo Chandra Madhab Ghose*) for the respondent.

JACKSON, J.—We think that this appeal must be dismissed on all points. It was a suit for arrears of rent for the years 1272 to 1276 (1865—70). The lower Court has decreed the whole of that rent with costs and interest.

The first point which has been taken in appeal is that the rent for the year 1272 (1865-1866) is barred by the law of limitation.

* Regular Appeal, No. 236 of 1870, from a decree of the Subordinate Judge of Tipperah dated the 3rd September 1870.

1872

DINDAYAL
PARAMANIK
v.
RADHAKISHO-
RI DEBI.