

not sufficiently proved the defendant's interest in the *dur-mokurari* holding, and remanding the case to enable him to give such evidence, the learned Judges continued].

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It was argued that the appeal would not lie under the Full Bench case of *Krishno Kamini Chowdhurani v. Gopi Mohun Ghose Hazra* (1). We are disposed to think that clause 41 of the second Schedule of the Small Cause Court Act of 1887 so modifies the law held by that Full Bench to be the result of the old Small Cause Court Act coupled with the Contract Act as to exclude such a suit as is contemplated by clause 41 of that Schedule from the jurisdiction of the Small Cause Court. At any rate we should not reject the appeal on that ground, entertaining as we do rather the opinion that the Act of 1887 restores the law laid down by Sir Barnes Peacock in the well-known Full Bench case of *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry* (2) before the Contract Act was passed, and that such a suit will not lie in the Small Cause Court.

F. K. D.

Case remanded.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

BURNA MOYI DASSEE (PLAINTIFF) v. BURMA MOYI CHOWDHURANI
AND ANOTHER (DEFENDANTS.) *

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August 27.

Limitation—Bengal Tenancy Act (VIII of 1885), section 184, and Schedule III, Art. 2 (b)—Suit for arrears of rent—Regulation VIII of 1819.

A landlord, to recover arrears of rent for the year 1297 B.S. from the *putni-dar*, filed a petition on the 1st Bysack 1298 (13th April 1891) in the Court of the Collector, under the provisions of Regulation VIII of 1819, praying for the sale of the *putni taluk*. The *taluk* was sold and was purchased by the landlord on the 1st Jeyt 1298 (14th May 1891). The whole of the arrears not being realized by the sale proceeds, the landlord brought an action on the 14th May 1894, for the balance of the *putni* rent to the end of 1297 B.S. (12th April 1891). The defence was that the suit was barred by limitation. *Held*, that the suit was governed by the provisions of the Bengal Tenancy Act, section 184, and Schedule III, Art. 2 (b); the period of limitation in a suit for rent provided by

* Appeal from Original Decree No. 288 of 1894, against the decree of Babu Krishna Nath Roy, Offg. Subordinate Judge of Khulna, dated the 2nd of July 1894.

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that article is three years from the last day of the Bengali year in which the arrear falls due, and as in this case the arrear fell due in the Bengali year 1297, which ended on the 12th April 1891, and the suit was not commenced until 14th May 1894, more than three years from the last day of the Bengali year in which the arrear fell due, it was barred by limitation.

THE facts of the case and the arguments appear sufficiently from the judgment of the High Court.

Mr. *A. Chaudhuri*, Babu *Sri Nath Dass*, and Babu *Girija Sunker Mazumdar*, for the appellant.

Babu *Upendro Nath Mitter* and Babu *Karuna Sindhu Mukerjee*, for the respondents.

The judgment of the Court (PETHERAM, C.J., and BEVERLEY, J.) was as follows :—

This is an action to recover the sum of Rs. 5,010-8-10, the balance of the rent of a *putni* to the end of the Bengali year 1297.

The Subordinate Judge has dismissed the suit on the ground that it is barred by limitation, and the plaintiff has appealed.

On the first day of the Bengali year 1298 the plaintiff filed a petition in the Court of the Collector to sell the *putni* under the provisions of Regulation VIII of 1819, and on the 1st of Jeyt 1298, equivalent to the 14th of May 1891, purchased it herself for Rs. 100.

The sale proceeds not being sufficient to liquidate the rent in arrear, this action was commenced on the 14th of May 1894 to recover the balance of the *putni* rent to the end of 1297 (which was equivalent to the 12th of April 1891), after giving credit for the sum of Rs. 100, for which the *putni* had been sold, and the question we have to consider is whether the period of limitation runs continuously from the 12th of April 1891, when the rent became due, or whether the time during which the proceedings before the Collector were pending must be deducted.

A good many cases were cited before us, and the following are those which it will be necessary to consider. In *Maharaja Mahtab Chunder v. Heera Lal* (1), the plaintiff instituted the suit to recover arrears of rent due from a *putni taluk* for the second

(1) S.D. A., 1858, p. 1688.

six months of 1249. It appears that the *putnidar* who executed the *kabuliyat* was named Sham Lall, and that, at the close of 1249, the plaintiff took the usual proceedings to bring the *taluk* to sale under Regulation VIII of 1819. Accordingly the *taluk* was sold on the 4th Jeyt 1250, and the suit was brought to recover that portion of the arrear which the sale proceeds did not cover. The suit was instituted on the 20th Bysack 1262.

The Judges held that the personal liability of the *putnidar* was confined to so much of the rent as was not covered by the proceeds of the sale, and that the period of limitation did not begin to run until the result of the sale was ascertained.

In *Maharaja Mahatab Chand v. Sona Bibee* (1), the Judges intimated that they entirely concurred with the earlier decision. This last was an appeal from a decision of the 11th of August 1857, and at the time these cases were decided the only law of limitation in India was that contained in Regulation III of 1793, section 14, which provided that no action should be tried if the cause of action had arisen twelve years before the suit should have been commenced, unless, *inter alia*, the plaintiff should prove that either from minority or some other good and sufficient cause he had been precluded from obtaining redress.

Swarnamayi v. Shashi Mukhi Barmani (2) was decided under section 32 of Act X of 1859. In that case, after the *putni* had been sold and the money paid over to the zemindar, the sale was set aside and the money refunded by the zemindar to the *putnidar*. The Privy Council held that under such circumstances a suit by the zemindar against the *putnidar* for the rent was not barred by the law of limitation, although it was commenced more than three years from the date mentioned in section 32 of Act X of 1859. The facts of that case were wholly different from those of the present case, and it was decided on the construction of section 32 of Act X of 1859.

In *Huro Pershad Roy v. Gopal Dass Dutt* (3) the Judicial Committee of the Privy Council held that, "after the expiration of the period prescribed by section 29 of Bengal Act VIII of 1869,

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(1) S. D. A., 1860, p. 273.

(2) 2 B. L. R., P. C., 60 ; 11 W. R., P. C., 5 ; 12 Moo. I. A., 244.

(3) I. L. R., 9 Calc., 255.

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a plaintiff suing for arrears of rent cannot insist on the pendency of another suit brought by him for possession of the land, as preventing limitation from running, where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it," and they explained that the decision in the case of *Swarnamayi v. Shashi Mukhi Barmani* (1) proceeded on the facts of that particular case. Several other cases were cited in the argument, but it is not necessary for us to notice them here.

The present case is governed by the provisions of the Bengal Tenancy Act, section 184, and Article 2 (b) of Schedule III to that Act. By that article the period of limitation in a suit for rent is three years from the last day of the Bengali year in which the arrear fell due, and as in this case the arrear fell due in the Bengali year 1297, which ended on the 12th of April 1891, and the suit was not commenced until the 14th of May 1894, it is manifest that the suit was not commenced within three years of the last day of the Bengali year in which the arrear fell due, and that none of the authorities quoted affect the case, and that the decision of the Subordinate Judge is correct.

The appeal will be dismissed with costs.

S. C. G.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

1895
 August 26.

DAMRI THAKUR (PETITIONER) v. BHOWANI SAHOO (OPPOSITE PARTY)*
Bench of Magistrates—Absence of member of Bench—Hearing of part of the case by two members and decision by three—Criminal Procedure Code (Act X of 1882), section 350.

Only those Magistrates who have heard the whole of the evidence can decide a case. There is no provision of law which provides for a change in the constitution of Benches of Magistrates during the hearing of a case. Section 350 of the Criminal Procedure Code does not apply to cases tried by Benches of Magistrates.

Sambhu Nath Sarkar v. Ram Kamal Guha (2) and *Hardwar Singh v. Khega Ojha* (3) followed.

* Criminal Revision No. 455 of 1895, against the order of L. Haro, Esq., District Magistrate of Tirhoot, dated the 23rd of July 1895, affirming the order passed by the Honorary Magistrate of Mozufferpore, dated the 1st July 1895.

(1) 2 B. L. R., P. C., 60; 11 W. R., P. C., 5; 12 Moo. I. A., 244.

(2) 13 C. L. R., 212.

(3) I. L. R., 20 Calc., 870.