

APPELLATE CIVIL.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

SOMAN GOPE (DEFENDANT) v. RAGHUBIR OJHA AND
OTHERS (PLAINTIFFS).*

1895
July 28.

Limitation Act (XV of 1877), Schedule II, Article 32—Bengal Tenancy Act (VIII of 1885), sections 25, clause (a) and 155—Suit for ejection and removal of trees—Limitation Act (XV of 1877), Schedule II, Article 120.

Article 32 of Schedule II of the Limitation Act (XV of 1877) applies to a suit brought under clause (a) of section 25 and section 155 of the Bengal Tenancy Act (VIII of 1885) for the ejection of a tenant and removal of trees planted by him on land leased out for agricultural purposes. Article 120 does not apply to such a case.

Kedarnath Nag v. Khetur Paul Sritiratho (1) and *Gunesh Dass v. Gondour Koormi* (2) distinguished.

This suit was brought on the 15th July 1893. It was alleged in the plaint that 15 cottahs of *bhit* land were leased out to the defendant for agricultural purposes, but that the defendant in Kartic, 1298 F. S. (October and November 1890), planted bamboos and mango trees upon 10 cottahs of the land without the plaintiffs' permission; that the land was thereby rendered unfit for the purpose for which it was let, and the plaintiffs served a notice of ejection as prescribed by section 155 of the Bengal Tenancy Act (VIII of 1885). The defendant having failed to remove the bamboos and mango trees as required by the notice, the plaintiffs in this action prayed for an order for removal of the trees and for ejection of the defendant.

The defendant pleaded limitation, and the Munsif held that the suit was barred under article 32, schedule II of the Limitation Act (XV of 1877). On appeal, the Subordinate Judge held that the suit was governed by article 120 of the said schedule, and that the suit was not barred by limitation.

The defendant appealed to the High Court.

* Appeal from Appellate Decree No. 2086 of 1894, against the decree of Babu Jagaddurlabh Mozuandar, Subordinate Judge of Tirhoot, dated the 10th of September 1894, reversing the decree of Babu Behari Lal Mullick, Munsif of Sitamarhi, dated the 2nd of March 1894.

(1) I. L. R., 6 Calc., 34.

(2) I. L. R., 9 Calc., 147.

Babu *Lakshmi Narayan Singh* for the appellant contended that section 25 of the Tenancy Act referred only to acts injurious to the tenure, and not to improvements thereof as in the present case, and there was really no ground for ejection. But even if the ground mentioned in clause (a) of that section was made out, the present case would come under article 32 and not under article 120 of schedule II of the Limitation Act. The Subordinate Judge refers to the case of *Gunesli Dass v. Gondour Koormi* (1), which followed an earlier ruling, *Kedarnath Nag v. Khettur Paal Sritirutno* (2). No reasons are given in the judgments in those cases, and the Allahabad High Court in *Gangadhar v. Zakurriya* (3) dissented from the earlier of them. Those cases moreover were not decisions on the Bengal Tenancy Act, and were somewhat different in their scope. The distinction between the two articles (32 and 120) is pointed out in *Musharuf Ali v. Ifikhar Hosain* (4).

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Babu *Sarada Charan Mitra* for the respondents.—The suit is under section 25 of the Tenancy Act, and the question is not one of *conversion* or *perversion*, but simply whether there was unfitness for the purpose of the tenancy. Such a case was not contemplated by article 32. That article is applicable to suits for compensation and not to suits for ejection, which is a special remedy provided for in the Tenancy Act. Of the cases cited one was a case in which the claim was based on custom, and the other was a case of compensation under a special contract. Reading sections 23, 25 and 155 of the Bengal Tenancy Act together, there seems to be a wholly different remedy prescribed in cases under the Tenancy Act. All the cases cited, however, are in favour of the contention that article 32 is inapplicable to the present case.

Babu *Lakshmi Narayan Singh* in reply.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

This suit was brought to evict a tenant on the ground of his having used the land in a manner which rendered it unfit for the purposes of the tenancy. The land was admittedly let for agricultural purposes, but the tenant turned it into an orchard.

(1) I. L. R., 9 Calc., 147.

(2) I. L. R., 6 Calc., 34.

(3) I. L. R., 8 All., 446.

(4) I. L. R., 10 All., 634.

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The lower Appellate Court has held that the land has been rendered unfit for the purposes of the tenancy, and even if we were inclined to do so, we are unable to interfere with this finding in second appeal.

The only question of law in the appeal is whether the suit was barred by limitation. The Munsif held that it was barred by article 32 of the 2nd schedule of the Limitation Act. The Subordinate Judge has held that it was not barred, and that article 120 applied.

It is argued before us that article 32 applies, and we think that it does apply. There can be no doubt but that this case is within the letter of that article, and there is nothing in the article to limit it to a suit for compensation. The article is independent of the nature of the remedy, and apparently applies equally to all classes of suits brought upon the cause of action referred to in the article. We think that this suit is clearly of the kind which the article is intended to provide for. It asks for removal of the trees on the land and for ejectment.

We notice that the Legislature in enacting the Bengal Tenancy Act provided one year's limitation for a suit to eject a raiyat on account of a breach of condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach; that is to say, for a suit under clause (b) of section 25 of the Act. They omitted to provide in that Act any limitation for a suit under clause (a) of that section, and they may possibly have considered that the general law which provides two years' limitation sufficiently dealt with that case. If it were otherwise, there would be an extraordinary difference between the periods provided in the one case for a suit where there is a written contract, and in the other for a suit of a similar nature where there is no written contract. Moreover, apart from the words of the section, it is obvious that in a case of this kind one would expect to find the Legislature fixing a comparatively short period of limitation, as great hardships might be done to a tenant if his landlord were to stand by and take no steps until close upon the expiration of a long period of limitation.

We have been to some extent pressed by two decisions by Division Benches of this Court. The first is the decision in the

case of *Kedarnath Nag v. Khetur Paul Svitirutno* (1), and the second that of *Gunesh Dass v. Gondour Koormi* (2). In neither of those cases is any reason given for the conclusion at which the Court arrived that article 32 was inapplicable. Moreover those cases are not cases under the Bengal Tenancy Act, or cases exactly of the class to which the present case belongs. If we found that they were identical with the present case, we should have been bound to refer the matter to a Full Bench, but we think it unnecessary to do so here. This suit was brought under section 25, clause (a) and section 155 of the Bengal Tenancy Act, and the question is whether a suit of that kind comes within article 32 of the Limitation Act. That question has never yet, as far as we know, been decided. We think that it does come under article 32.

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In the result we set aside the decision of the Subordinate Judge and restore that of the Munsif. The appellants are entitled to their costs in this Court and in the lower Appellate Court.

S. G. C.

Appeal allowed.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

DEWAN ROY (PLAINTIFF) v. SUNDAR TEWARY AND OTHERS
(DEFENDANTS).^a

1896.
August 13.

Second Appeal—Civil Procedure Code (1882), section 586—Suit for money paid and damages incurred by distraint of crops—Provincial Small Cause Court Act (IX of 1887), Schedule II, Article 35, clause (j).

A suit to recover money paid to redeem crops which had been distrained by the defendants for rents due from persons other than the plaintiffs, and also for damages sustained on account of the distraint, is, so far as the claim relates to damages, a suit coming under clause (j), art. 35 of the Provincial Small Cause Court Act (IX of 1887), and is therefore not entirely a suit of the nature of a Small Cause Court suit.

Section 586 of the Civil Procedure Code (1882) does not bar a second appeal in such a suit.

THE facts of the case, so far as they are necessary for the

^a Appeal from Appellate Decree No. 163 of 1895, against the decree of G. G. Day, Esq., District Judge of Shahabad, dated the 17th of December 1894, reversing the decree of Babu Tara Podo Chatterjee, Munsif of Arrah, dated the 30th of June 1894.

(1) I. L. R., 6 Calc., 34.

(2) I. L. R., 9 Calc., 147.