

attending when the appeal was called on for hearing. If he is not prepared at the time to satisfy the Court in these particulars, his application is properly rejected. That is what seems to have happened in this case. The appeal is dismissed with costs.

1880

ANUNDA  
SHAHA  
BISWAS  
v.  
KEMA  
BEBEE.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

RAM DUTT SINGH (DEFENDANT) v. HORAKH NARAIN SINGH  
(PLAINTIFF).\*

1880  
*Dec. 18.*

*Limitation Act (XV of 1877), sched. ii, arts. 99, 132—Suit for Share of Government Revenue, and for Declaration that Estate is charged with amount.*

A suit for recovery of Government revenue, which the defendant was bound to pay, but which has been paid by the plaintiff to save the whole estate from sale, where the plaintiff asks to have the amount so paid made a charge on the portion for which he paid it, is governed by art. 132, and not by art. 99 of Act XV of 1877.

THE plaintiff in this case sued for Rs. 439-6, being the Government revenue paid by him for a mouza called Mouza Tulsipore, from 13th September 1866 to 8th August 1878, on account of the defendant. Mouza Tulsipore was a portion of the talook of Beharpore Agarsanda, which was held by the defendant, the remaining portion being held under a ticca lease and a conditional deed of sale by the plaintiff. The portion of the Government revenue due for Mouza Tulsipore for the above period not having been paid by the defendant, the plaintiff was compelled to pay it in order to save his own portion from sale for the arrears.

The plaintiff prayed for a decree for the above sum with interest, and that it might be recovered by the sale of Mouza Tulsipore, and for a declaration that the said sum was a charge

\* Appeal from Appellate Decree, No. 1028 of 1879, against the decree of A. V. Palmer, Esq., Judge of Shahabad, dated the 25th February 1879, affirming the decree of Baboo Lal Gopal Sen, Second Munsif of Arra, dated the 24th September 1878.

1880  
 RAM DUTT  
 SINGH  
 v.  
 HORAKH  
 NARAIN  
 SINGH.

on Mouza Tulsipore. The defendant contended (*inter alia*) that the suit was barred by limitation under art. 99, Act XV of 1877.

The Munsif held that art. 132, and not art. 99, of Act XV of 1877 was applicable, and gave the plaintiff a decree.

The Judge on appeal upheld that decree, and dismissed the appeal.

The defendant thereupon appealed to the High Court.

Baboo *Doorga Pershad* for the appellant.

Baboo *Pran Nath Pundit* for the respondent.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—This is a suit to recover Rs. 439-6, being money paid by the plaintiff, between September 1866 and August 1878, as revenue of Mouza Tulsipore, belonging to defendant, with interest thereon. The plaintiff held the other mouzas of the defendant's estate under baibilwafa and lease, by the conditions of which he was to pay the revenue of them, there being no obligation on him to pay the revenue of Tulsipore. But his allegation is, that the defendant neglected to pay the revenue of Tulsipore, and that he, the plaintiff, was, therefore, compelled to do so.

The defence was, first, that, by art. 99, sched. ii, Act XV, 1877, the plaintiff's suit was wholly barred; second, that the plaintiff paid the revenue of Tulsipore by arrangement, receiving a corresponding reduction of his rent. This last plea was decided against the defendant in both the lower Courts, and although allusion is made to it in the last ground of appeal, it has not been mooted before us. Both the lower Courts have held that art. 132, and not art. 99, sched. ii, applies on the authority of *Enayet Hossein v. Muddun Moonee Shahoon* (1) and *Deo Nandan Ojha v. Musst. Dulhun Bisnath Koer* (2). Before us it is again urged, that art. 99 applies, that art. 132 does not, and

(1) 14 B. L. R., 155; S. C., 22 W. R., 411.

(2) Sp. Ap., No. 1913 of 1876, unreported.

that the plaintiff is not entitled to interest and to a declaration of lien on the mouza.

We think art. 99 has no application to the case, the plaintiff having paid the money, neither under a decree nor as a joint proprietor of the estate. The plaintiff is undoubtedly entitled to recover the money under s. 9, of Act XI of 1859, and he might also, under that section, have retained his lien on the other mouzas of the estate till his money had been paid. He is equally entitled to recover his money under s. 69 of the Contract Act, and we think that the liability to pay the revenue was not merely a personal liability of the defendant, but was also a liability imposed upon the defendant's estate.—*Mothooranath Chuttopadhya v. Kristo Kumar Ghose* (1).

As regards the period of limitation, we are unable to distinguish the case from *Deo Nandan Ojha v. Musst. Dulhun Bisnath Kooer* (2); and we, therefore, concur in thinking that art. 132 applies. We see no reason why the plaintiff should not recover interest on the money, nor do we object to his obtaining a declaration that the money is recoverable by sale of Mouza Tulsipore, though it would have been better if he had asked for recovery by sale of the entire estate.

The appeal will, therefore, be dismissed with costs.

*Appeal dismissed.*

*Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.*

RAMTONU ACHARJEE *v.* PEARYMOHUN ACHARJEE.\*

1880  
Dec. 21.

*Suit in Small Cause Court—Accounts—Want of Jurisdiction.*

*A, B, and C*, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated the suit by proving payment of the entire rent to *B*.

*A* then brought a suit in the Small Cause Court against *B* for damages equal in amount to the one-third of rent due to him and the costs incurred by

\* Rule No. 1044 of 1880, against the order of J. Weston, Esq., Judge of Small Cause Court at Narail, dated the 5th June 1880.

(1) I. L. R., 4 Calc., 369.

(2) Sp. Ap., No. 1913 of 1876, unreported.