

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

1880  
May 21.

KEDARNATH NAG (DEFENDANT) *v.* KHETTURPAUL SRITIRUTNO  
AND ANOTHER (PLAINTIFFS).\*

*Limitation Act (XV of 1877), sched. ii, art. 120—Breach of Covenant in a Lease.*

The defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission. The defendant having, nevertheless, constructed a tank without such permission, the plaintiff brought a suit to compel him to fill up the tank, or, in case he should fail to do so, for compensation.

*Held*, that the period of limitation applicable to such a suit was art. 120 of sched. ii of the Limitation Act.

Baboo *Sreenath Doss* and Baboo *Golap Chunder Sircar* for the appellant.

Baboo *Bhojrub Chunder Banerjee* for the respondent.

THE facts of this case sufficiently appear in the judgment of the Court (JACKSON and TOTTENHAM, JJ.), which was delivered by

TOTTENHAM, J.—The appellant in this case holds a jumma in the estate of the Sobha Bazar Rajah, the late Sir Radha Kant Deb Bahadoor, of which estate the plaintiffs are trustees.

By his lease the defendant was prohibited from digging any tank in his holding without the permission of his lessor. He has, however, excavated a tank, and built pūcka ghats, converting the surrounding lands into a garden.

The plaintiffs brought this suit to compel him to fill up the tank, and to restore the land to its original state, or, should he fail to do so, to make him pay them Rs. 715 as compensation.

The defendant pleaded limitation, and further, that the tank

\* Appeal from Appellate Decree, No. 1329 of 1879, against the decree of H. Beverley, Esq., Additional Judge of the 24-Pargannas, dated the 9th of April 1879, reversing the decree of Baboo Dwarka Nath Mitter, Munsif of Sealdah, dated the 4th of September 1878.

was excavated with the knowledge and permission of the former executors of the estate, who also made no objection at the time the work was done. The first Court finding that the tank was made at least four years previous to the suit, held, that the plea of limitation was established, because it thought that the suit came under art. 32 of the second schedule of the Act, which prescribes two years as the period for a suit against a person for perverting property to purposes other than the specific purpose for which he has a right to use it. On the merits, the first Court held, that the defendant had failed to make out that he had obtained any permission to excavate; but at the same time held, that the long silence of the plaintiffs and their predecessors, who had quietly allowed the defendant to lay out money in improving the property, implied acquiescence on their part. It considered that, in equity, the plaintiffs were entitled to no relief; and dismissed the suit.

1880  
KUDARNATH  
NAG  
v.  
KHETTUR-  
PAUL  
SRIHARINO.

The Appellate Court was of opinion that the suit did not come under art. 32 of the Limitation Act, but under art. 116, which gives a period of six years (1). It, therefore, overruled the Munsif's decision that the suit was barred by limitation.

On the merits, the Appellate Court held, that the defendant had wrongly broken the conditions of his lease, and that he could not be allowed to plead that he had improved the land, or that his lessors had taken no steps to restrain him at the time he made the tank. The Court gave the plaintiffs a decree, by which the defendant was ordered to fill up the tank within six months, or in default to pay to the plaintiffs a sum of Rs. 300.

The defendant, in this second appeal, contends, that the lower Court was wrong in overruling the plea of limitation; that, under the circumstances, the plaintiffs were not entitled, after so long a period, to an order for the filling up of the tank again with earth, and that, at any rate, no more than nominal damages should have been awarded.

(1) From the judgment of the Appellate Court it appears that the lease was a registered document. See the case of *Nobocomar Moohhopadhaya v. Siru Mullick*, *post*, p. 94.

1880  
 KEDARNATH  
 NAG  
 v.  
 KHETTUR-  
 PAUL  
 SRITIRUTNO.

As to limitation we think with the lower Appellate Court that art. 32 does not apply to this case. It seems to us to fall under art. 120, which gives a period of six years.

(The subsequent portion of the judgment, in which certain equitable considerations arising in the case are discussed, is not relevant for the purpose of this report. A decree for nominal damages was given.)

*Appeal allowed.*

*Before Mr. Justice Jackson and Mr. Justice Tottenham.*

1880  
 May 27.

RAMCOOMAR MITTER (PLAINTIFF) v. ICHAMOYIDASI (REPRESENTATIVE OF SHYAMACHARAN SIRKAR, ONE OF THE DEFENDANTS).\*

*Hindu Widow—Money borrowed to defray Grand-Daughter's Marriage Expenses—Liability of Reversioner.*

A Hindu widow borrowed a sum of money for the purpose of defraying the marriage expenses of a grand-daughter, the child of a son who had predeceased his father.

*Held*, that such sum, although it could not properly be considered a charge on the grandfather's estate, yet was one which was legally recoverable from the heirs, who, on the death of the widow, succeeded to the possession of such estate.

THIS was a suit for the recovery of Rs. 750. The plaintiff alleged that one Nilmoni Sirkar died on the 28th August 1865, leaving him surviving his widow Bindubasini, his daughter-in-law, Bhabasundari, one of the defendants, and three unmarried grand-daughters (daughters of Bhabasundari); that Bindubasini, while in possession of her deceased husband's estate, in order to meet the expenses of the marriage of Kusumkumari, one of these grand-daughters, borrowed, in conjunction with the defendant Bhabasundari, from the plaintiff, the sum of Rs. 750, in two separate sums of Rs. 500 and Rs. 250, obtained on the 25th of May

\* Appeal from Appellate Decree, No. 1887 of 1879, against the decree of Baboo Sreenath Roy, Subordinate Judge of Hooghly, dated the 5th May 1879, affirming the decree of Baboo Gobind Chunder Ghose, Second Munsif of Howrah, dated the 10th May 1878.