

(1933) 03 CAL CK 0053
In the Calcutta High Court

Abdul Latif and Others

APPELLANT

Vs

Hamed Gazi and Others

RESPONDENT

Date of Decision : 21-03-1933

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : AIR 1933 Cal 898

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—The suit, out of which this appeal has arisen, was instituted by the plaintiff's for a declaration of their karsha right in the lands in suit and for evicting defendant 1 therefrom. The plaintiffs case was as follows: They inherited the karsha from their predecessor Nawab Ali, who was a tenant under one Ambikacharan Bhattacharjya, and others and one Kanai Khan was an under-raiyat under Nawab Ali. The interest of Ambikacharan Bhattacharjya and others was subsequently purchased by defendant 2. On the death of Kanai Khan, they sued the heirs of Kanai Khan and certain mortgagees from Kanai Khan for khas possession and obtained a decree against the said heirs only, but not against the mortgagees who disclaimed all interest. They obtained khas possession in execution and settled the land with defendant 3. Then there was a proceeding u/s 145, Criminal P.C., in which the possession of defendant 1, who was said to be a bargadar under the mortgagees, was maintained. The plaintiffs' case was that defendant 1 dispossessed them in Chaitra, 1334 B.S. The defence taken was that the suit was barred by limitation, as the plaintiffs predecessor, Nawab Ali, as well as the under-raiyat, Kanai Khan, surrendered their respective interests in favour of defendant 2 in 1324 B.S. and that since then defendant 2 has been in possession through her bargadar, defendant 1.

2. The story of surrender has not been believed by either of the Courts below. The Munsif found the plaintiffs' title established. He held that defendant 1 has been in possession since 1326 B.S. and that the story of the plaintiffs'

possession through defendant 3 was not true. On a consideration of the facts which he found, he came to the conclusion that the possession of defendant 1 was obtained by means of dispossession of Kanai Khan, who was in actual possession as an under-raiyat under the plaintiffs' predecessor Nawab Ali. He held that the possession of defendant 2 through defendant 1 would, at the most be tantamount to a dispossession of Kanai Khan and not of the plaintiffs. In this view, he held that the suit was not barred by limitation, either general or special.

3. The Subordinate Judge held that the story that defendant 1 came under a settlement from the mortgagees was not true. He held further that defendant 1 was in possession in 1327, 1328 and 1329 on the strength of a kabuliyat which defendant 1 executed in favour of defendant 2. On these findings he held that the suit was barred under the special limitation prescribed in Article 3, Sch. 3, Ben. Ten. Act. The plaintiff, as appellant, contends that the article does not apply for two reasons, which perhaps it would be better to formulate definitely. They are firstly, because there is nothing to show that the dispossession was by the landlord or at his instance, as the taking of a kabuliyat would not necessarily indicate that it was so; and, secondly, that, when defendant 1 came into possession, the land was in the possession of the heirs of the under-raiyat Kanai Khan, who had no right to remain on the land and were consequently trespassers, and therefore the dispossession was of these trespassers and not of the plaintiff's.

4. As regards the first of these two grounds, it has no substance, because when the landlord grants a settlement it may well be presumed that he intends that the settlement would take effect; and the consequence of this presumption must be that he expects that the persons, with whom the settlement is made would go upon the land and take possession of it. I think the Subordinate Judge was right in holding that the reasonable conclusion upon the facts found is that it was a case of the landlord bringing the dispossessor on the land. The appellant's argument receives some support from what has been said in the case of Haran Chandra v. Madan Mohan AIR 1921 Cal 249, namely

They have no doubt obtained a settlement from the landlord, but it is not found that they were authorized by the landlord to oust the plaintiffs.

5. I must confess that I am unable to follow all the reasons given for the decision in that case, though the decision itself is perfectly defensible on the ground that, in view of the fact that the defendants denied the plaintiffs' title to the lands as based upon a settlement from the landlords, it was not open to the defendants to plead in the same breath that the article applied-a position which can only be maintained on the footing that there was such a settlement. Having regard to the cases, upon which the decision purported to rely and the facts found, the dispossession in that case, as far as I can make out was clearly referable to the action of the landlords and so was one hit by the article. The decision of the Full Bench in the case of Ranijulla v. Ishab Dhali (1962) 29 Cal 610, on which the learned Judges in that case relied, merely purported to settle a conflict as

regards cases in which after the dispossession the dispossessor obtained a settlement from the landlord. So far as the second ground is concerned, it is based upon the finding of the Courts below that Kanai Khan, the under-raiyat, died in 1326 and defendant 1 dispossessed the heirs of Kanai Khan in 1327 on the strength of the settlement which defendants, the landlord, made in his favour in that year. The question is whether, in such circumstances, the plaintiff can be said to have been dispossessed by defendant 2.

6. The period of one year allowed u/s 32 of Act 10 of 1859 was extended by Bengal Act 8 of 1869 to two years, and up to 1885 the law was understood to be that, for action in the nature of possessory suits, the period of limitation was two years, but that when the title of one party or the other was denied, then the period was twelve years under the general law. By reason of the provision contained in Section 184 of Act 8 of 1885 it was held that Act intended to exclude all other statutes of limitation wherever it was possible to apply the provision of the special limitation provided in its Sch. 3 [Saraswati Dasi v. Roritarun Chuckerbutti (1889) 16 Cal 741, Ramdhan Bhadra v. Ram Kumar Dey (1890) 17 Cal 926]. In 1907, the article was amended by substituting for the words "occupancy raiyat" the words "raiyat or under-raiyat." It has been held that the word "dispossession" appearing in this article implies the coming in of a person and the driving out of another from possession [Brojendra Kishore Roy v. Sarojini Ray (1916) 31 IC 242]. It has also been held that it was intended by this article to deal with such rights as existed between landlord and tenant and that to deprive a tenant of his right of suit under the general rule of limitation there must be a plain dispossession within the meaning of Article 3. [Krishna Chandra v. Satischandra [(1916) 35 IC 365] It has also been laid down that an extended meaning should not be given to the article by resorting to the theory of constructive dispossession. So in cases in which the defendant came into possession by the permission of the plaintiff, the landlord then refused to vacate [Sonatan Sheikh v. Chaku Sheikh (1909) 3 IC 398], or where the landlord has simply favoured a dispossession by a third party [Basanta Kumary v. Nanda Ram (1913) 20 IC 350], or the landlord dispossessed the tenant by obtaining a decree for rent [Durgapada Panja v. Bhusan Chandra Ghosh (1917) 39 IC 383, Kamaldhari Thakur v. Rameshur Singh (1913) 19 IC 545, Rudra Narain v. Natobar Jana AIR 1914 Cal 50, or where the landlord refused to put the defendant in possession [Panchoo Kapali v. Jagneswar Majhi AIR 1920 Cal 848; Rajani Kanta Biswas and Others Vs. Panchanon Mondal and Others,], it has been held that the act amounts to dispossession only constructively. There are other decisions of doubtful authority in support of the view that a dispossession by selling up the holding in execution of a rent decree, so that a purchaser comes into possession of it, is within the meaning of the article, e.g., Aminuddin v. Ulfatunissa (1909) 3 IC 315. See Kamaldhari v. Rameshur (1913) 19 IC 545 and Durgapada Panja v. Bhusan Chandra Ghosh (1917) 39 IC 383. A restricted view that the dispossession must be by the landlord as such, has now been completely overthrown: Satis Chandra Bandopadhyaya and Others Vs. Hashem Ali Kazi and

Others, .

7. The question whether a dispossession by a landlord of a raiyat when the land of the raiyat is in the actual possession of a trespasser does not appear to have been considered in any case. It is true that the plaintiff or his father Nawab Ali was in possession of the land through his under-raiyat, Kanai Khan, so long as the latter was alive, It is also true that when Kanai Khan died his heirs were but trespassers. But if defendant 2 granted a settlement to defendant 1, on the strength of which the latter dispossessed the trespassers and came into possession, then, although it was the trespassers who were dispossessed in the first instance, the effect of this dispossession, in my judgment, was nothing else than the driving out of the plaintiff and the getting into possession of defendant 1 at the instance of defendant 2. This, in my opinion, follows from the principle that one trespasser cannot tack on his possession with that of another, who preceded him, and that between the departure of the first trespasser and the advent of the second the law will assume an interval during which the plaintiff was in possession. I am of opinion that Article 3 applies to this case. The appeal therefore should be dismissed with costs.