

(1912) 04 MAD CK 0058
In the Madras High Court

Ambalavana Chetty and Another

APPELLANT

Vs

Singaravelu Odayar and Others

RESPONDENT

Date of Decision : 26-04-1912

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : 15 Ind. Cas. 146

Hon'ble Judges : Sundara Aiyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The Subordinate Judge has not recorded clear findings on the questions:

(1) How long the 1st defendant or any person who derived his possession from or through him continued to be in possession; and

(2) when and how the 3rd defendant obtained possession of the land.

2. The findings will be submitted within one month after the recess and seven days will be allowed for filing objections.

3. Any further question arising in the second appeal is reserved.

4. In compliance with the above order, the Subordinate Judge of Kubakonam submitted the following

FINDINGS

I have been asked to submit on the evidence on record findings on the following issues:

(1) How long the 1st defendant or any person who derived his possession from or through him continued to be in possession?

(2) When and how the 3rd defendant obtained possession of the land?

2. The first issue requires a preliminary finding on the issue as to which persons, if any, derived their possession through or under the 1st defendant. The District

Munsif found that Korangu Samu was a tenant of the 3rd defendant's father and the 3rd defendant, and that there is nothing convincing on record to connect the tenancy of plaintiffs' 4th witness with that of Korangu Samu. This Court, on the other hand, says that it is in the evidence of this witness (plaintiffs' 4th witness) that he let into possession one Korangu Samu that the 3rd defendant would appear to have taken possession of the shop from the last named individual, and that so far as the suit site is concerned, any occupation or use thereof by any number of successive persons must be traced to the original permission derived under Exhibit A. The High Court do not consider this as a definite finding, but do not say what facts should be taken as concluded by findings.

3. Defendants Nos. 2 and 3 began to argue before me that the suit site or shop is not included in the title-deeds of the plaintiffs, Exhibits B, G and A. That was not the basis on which the suit was tried and heard before the District Munsif, vide para. 7 of his judgment. It was not denied in this Court, too, on the previous occasion. The question of the title being in plaintiffs was not even questioned in the grounds of second appeal. I, therefore, disallowed the new ground of objection to the title and the title-deeds of plaintiffs.

4. It may, therefore, be accepted that plaintiffs, who were the owners of the property, let the 1st defendant into possession under Exhibit A in the year 1888, and that the 1st defendant sub-let the shop to the father of plaintiffs' 4th witness who describes himself as shop-keeper in Exhibit G. The lease, Exhibit A expires, with 30th Panguni, Vikruti (11th April 1891); and the 1st defendant executed no fresh lease deed thereafter. He says: "First plaintiff did not ask me to renew the lease deed. First plaintiff asked me to execute a fresh lease deed (for) sometime. I did not execute one. I did not pay rent directly to 1st plaintiff." It is not likely that 1st defendant did continue as lessee of the shop even after the period fixed in Exhibit A without giving a renewed rent chit, especially when the 1st defendant was not himself in actual possession. It is also strange that the attestation of Nagalinga who occupied the premises was not secured even on Exhibit A, and that 1st defendant did not secure any rent chit from Nagalinga and after his death from his son (plaintiffs' 4th witness). These considerations, no doubt, throw considerable suspicion on the reality of the 1st defendant's tenancy itself under the plaintiffs and of the subtenancy of Nagalinga and plaintiffs' 4th witness under 1st defendant. But I am not prepared to attach any importance to these vague suggestions when the 3rd defendant (defence 1st witness) does not himself know who was in possession of the shop prior to Korangu Samu, who was admittedly in actual possession prior to 1894, the date of Exhibit I, according to the case both of the plaintiffs and of the defendants. Plaintiffs' 1st witness, the agent of the plaintiffs' family, swears to having collected rent from Naga-linga and his son (plaintiffs' 4th witness) till 1892, and files accounts, Exhibits C and D, in corroboration of his evidence. No satisfactory ground is made out for discrediting these pieces of evidence as regards collection of rent: and there is no satisfactory evidence of actual enjoyment of the shop by the 3rd defendant or his father during that period. This version of the collection of rent

also relates to the period expressly covered by Exhibit A. I, therefore, find that the 1st defendant through his sub-lessees, Nagalinga, and Swaminadha, (plaintiffs' 4th witness) was in possession of the shop down to the year 1892.

5. The person that came into possession next is Korangu Samu. Plaintiffs claim Korangu Samu as let into possession by their sub-lessee, Swaminatha (plaintiffs' 4th witness), while the 3rd defendant claims him to be his father's lessee. His enjoyment of the shop is admitted by both sides. The only question for consideration is as to whose lessee he was. There is no mention of this personage in any part of the pleadings. Plaintiffs' 1st witness, the agent of the plaintiffs till 1892, makes no mention of Korangu Samu or his getting the shop from plaintiffs' 4th witness or even the fact that plaintiffs' 4th witness had to leave the place for Pondicherry for treatment. Agent Sreenivasa Iyengar, who succeeded plaintiffs' 1st witness, is not put forward, and there is no evidence as to whether he is alive or not. Plaintiffs' 2nd witness who professes to have collected rents of the shop does not mention this occupant's name in his examination-in-chief, and it is elicited from him by the defence for the first time, that Ammanpettai Sami Chetty (alias Korangu Somu) was also trading in the plaintiff shop for two or three years and was paying rent. It is curious how this witness who professes to have collected rents from the occupants did not give the names of the occupants till their names were put to him in cross-examination, and how he ridiculously blunders and knows not what he deposes to, when he says "Naga-linga (who died prior to 1892) was in possession of the shop after Sami Chetty (Korangu Samu)." Even Nagalinga's son, Swaminatha (plaintiff's 4th witness), does not return from Pondicherry till after five or six years later. The B Diary of the suit shows there was an interval between the examination of plaintiffs' 2nd witness and that of plaintiffs' 3rd witness (21st October 1909 to 6th November 1909). This interval appears to have been utilised to put forward for the first time the story of regular letting of the shop by Swaminatha (plaintiffs' 4th witness) to Korangu Samu. Plaintiffs' second witness was not able on 21st October 1909 to depose to this letting, but was content in repeating in re-examination that Sami Chetty (Korangu Samu) was also paying rent to Udayar (plaintiffs). Plaintiffs' 3rd witness (1st defendant) was not quite willing to be the father of this new story and would only depose "Sami Pillai (plaintiffs' 4th witness) left the shop on rent to Korangu Sami Pillai. Sami Pillai (later) said that Sami Pillai had asked him to pay the rent to Sami Pillai. This he said when I asked him to pay rent." Plaintiffs' 4th witness deposes: "After my father's death, I enjoyed it for 2 years. My father died 13--18 1/2 years ago.... I left the shop for rent to Korangu Sami Chetty. He executed lease-deed to me which I lost. I asked Samia Chetty to pay the rent to Someswara Royar (3rd plaintiff) and asked him to pay the amount in my house. I left for Pondicherry for medical treatment for five years in Pondicherry, Mayavaram and other places. I returned to Melakaveri six years ago. When I returned, I was told that Someswara, Royar has purchased it from the daughter of one Kumarasawmy Pillai. I have come to Court only this day in connection with this suit. I do not

know for how many years my father took the shop on rent. I have not executed any lease-deed. I was paying rent for nearly 30 years. I took no receipt for the rent paid by me. I keep no accounts. There was no settled rent when my father took the lease." It is not possible to say if this is the son of the sublessee Nagalinga, from the evidence he gives, and from the stage of the case when he was put forward as witness. His is the only evidence that Korangu Sawmi was his tenant. I am not prepared to attach any weight to such evidence, especially when the agents of plaintiff (plaintiffs' witnesses Nos. 1 and 2) and the 1st defendant himself do not profess any tangible knowledge of the tenant, Korangu. Sawmi, in actual occupation of the shop. Defence witnesses Nos. 1 to 5 do not also say if Korangu Samu, who was in possession of the shop, was tenant of plaintiffs or of the 3rd defendant. Korangu Samu is not put forward as witness by either side and the evidence does not show whether he is alive or dead, I, therefore, find that Korangu Samu was in possession of the shop after 1892 for two or three years (vide plaintiffs' 2nd witness), but he is not shown to be either the tenant of plaintiffs' sub-lessee or the tenant of 3rd defendant's father.

6. The possession of Korangu Samu carries the history of the suit shop down to about 1894 or 1395. There is no evidence worth the name about the possession of the suit shop in favour of the plaintiffs. The vague statement of plaintiffs' witnesses Nos. 2 and 3 that rent was paid till seven or eight years ago is worthless. Plaintiffs' 4th witness who was the plaintiffs' sub-lessee was away from the place after 1892 and knows nothing about the enjoyment of the suit shop and the payment thereof. Plaintiffs' witnesses Nos. 2 and 3 could not give even the names of the occupants of the shop and how they came into possession of the shop. The defendants' evidence of possession and enjoyment of the shop is cogent and convincing at least from 1895, the date of Exhibit II, if not from 1894, the date of Exhibit I. Exhibit I is unregistered and the tenant that held under it is not called. Exhibit II to VI series show defendants' possession and enjoyment. The Municipal receipts, Exhibit E series and F, are not of much value as showing possession. I, therefore, find that plaintiffs, the 1st defendant or persons that claim under him, are not proved to have been in possession subsequent to 1892, and that the 3rd defendant's father and the 3rd defendant and their lessees have been in possession and enjoyment of the suit shop from 18th December 1895, the date of Exhibit II.

7. The plaintiffs then contended that the enjoyment and possession of the shop is not possession of the site of the shop. It will be remembered that plaintiffs acquired only the bare site under Exhibit B and rented it out to 1st defendant under Exhibit A for the express purpose of putting up a shop for three years. The shop on the site appears to have been only a thatch and was renewed from time to time by the occupants--see Exhibit V and the leases, Exhibits II to IVa. It would, no doubt, be true that persons let into possession by the 1st defendant and those that claim under him cannot set up their own title or possession as well of the thatch as of the land. But where a person whose possession of the shop could not be traced to the 1st defendant or his lessees is in possession and

enjoyment of the shop, the argument that such a person must be taken to have prescribed only for the superstructure and not for the site occupied by the thatch is unintelligible. The possession and enjoyment of the thatched shop is exclusive possession of the site as well. The defendants' non-payment of the Municipal taxes till recently and the payment of the same by the plaintiffs relates as well to the title of the thatch as to the site below. Municipal taxes are generally levied for the shop and not for bare sites. I, therefore, find that the possession and enjoyment of the defendants Nos. 2 and 3 covered both the shop and the site.

8. How the 3rd defendant obtained possession of the land is not clear from the evidence. Plaintiffs' 2nd witness does not say how the 3rd defendant came to be in possession of the shop or the land. He admits that Subramania Vadyar (the father of the 3rd defendant) was also in possession of the shop for some time. He does not say that they paid rent to any person or to the plaintiffs. Plaintiffs' 2nd witness, the direct lessee under plaintiffs and his sublessee (plaintiffs' 4th witness), do not say anything about the point. The 3rd defendant claimed the shop as his ancestral property, but let in no evidence about it except his own oath. He has given up that case in second appeal--see the grounds of appeal. He alleged in his written statement that the suit land was measured in his name in the survey that took place more than 12 years ago as Survey No. 1338. But the plaintiffs did not choose to question that statement at the trial, and the survey papers have not been put in. It is, however, clear from this evidence set out above, that 3rd defendant's father and after him the 3rd defendant have been in possession and enjoyment of the shop and the land from even prior to 1895, the date of Exhibit II taken by the 3rd defendant only, and that they did not hold under any person but in their own right. I am unable to agree with the observation of this Court cited above in para. 2 that all possession must be traced to Exhibit A, even where there is no evidence that the persons thus in possession have paid rent or attorned to the plaintiffs or 1st defendant or the sub-lessees. The evidence is that after 3rd defendant came to be in possession, not only he but all the shop-keepers refused to pay rent--See plaintiffs' 2nd witness. I, therefore, find that it is not shown how the 3rd defendant obtained possession of the land and that he, therefore, got into possession on his account and in his own right.

9. In the result my findings on the issue are:

(1) That the 1st defendant and his sublessees, Nagalinga and Swaminadha, were in possession only till the year 1892, and that Korangu Samu was in possession thereafter till the 3rd defendant's father came into possession some time prior to December 1895, and is not shown to be a person that held under 1st defendant or his sub-lessee, and that the 3rd defendant has been in possession of the land for some time prior to December 1895, at the worst, and that, as it is not shown how he obtained possession or that he obtained possession from or under plaintiffs' lessee or sub-lessees, the 3rd defendant was in possession in his own right and on his account.

This second appeal coming on for final hearing, after the return of the findings from the lower Appellate Court, upon the issues referred by this Court for trial on Wednesday, the 27th day of March 1912, and having stood over for consideration till this day, the Court delivered the following

JUDGMENT

Abdur Rahim, J.

5. It is clear from the facts as found by the Subordinate Judge that the plaintiffs, who are suing to eject the defendants from certain land, which is actually in the possession of the 3rd defendant, have not been in possession of the property since 1892, that in that year the plaintiffs' lessee, the 1st defendant, who, on the expiry of his lease which was for a term, was holding on as a tenant from year to year abandoned the land and that the 2nd and 3rd defendants have been in possession of the land from the end of 1895 asserting an absolute right thereto. The suit was instituted in 1908, i. e., more than 12 years after defendants Nos. 2 and 3 entered upon possession of the land. There can be no doubt that the defendants purported to hold the land adversely to the plaintiffs from the day on which they took possession and unless it is shown that the plaintiffs are entitled to wait as long as they have not given a notice to quit to the 1st defendant, who in fact quitted possession of the land in 1892 and that in the meantime, time will not run against them, the suit must be held to be time-barred. The learned Vakil for the plaintiffs (respondents) has argued that Article 144 of the Limitation Act applies and not Article 142. Even if so, there can be no doubt that the defendants Nos. 2 and 3 asserted a title adverse to the plaintiffs and were in possession in pursuance of such a claim. But reliance is placed on the authority of the cases *Ramanadan Chetti v. Pulikutti Servai* 21 M.P 288 and *Molamal Illath v. Secretary of State* 19 M.L.J. 347 : 4 Ind. Cas. 30 : 5 M.L.T. 213 which lay down that when a land is in possession of a tenant, the term of whose lease is outstanding and such tenant is ousted from possession by a trespasser, time will not run against the owner until the expiry of the term. I do not propose at present to consider whether the law is correctly laid down in these cases as that question was not raised at the bar although my learned brother, whose judgment J. have had the advantage of reading, having expressed a doubt as to the correctness of these decisions, the question may have to be re-considered when it is properly raised. Nor is it necessary to consider how far these rulings are applicable in a case when the land at the date of dispossession was in the possession of a tenant from year to year. It is sufficient to say in this case, that the 1st defendant, who at least was a tenant from year to year in 1892 and does not contest the claim of the plaintiff, having abandoned the land for more than 12 years before the suit, there was nothing in the way of the plaintiff's taking steps in time to eject the 2nd and 3rd defendants if he chose to do so.

6. The result is that the second appeal will be allowed, the decree of the first Appellate Court reversed, and that of the District Munsif restored with costs in this and in the lower Appellate Court.

Sundara Aiyar, J.

7. In this case the plaintiff instituted a suit to eject the defendants from a plot of land which, according to him, he leased to the 1st defendant for a period of three years in May 1888. The 1st and 2nd defendants alone were made parties to the suit. He stated in his plaint that rent was paid by the 1st defendant up to December 1896. The 2nd defendant was made a party on the ground that he either through the 1st defendant or by some other means has been enjoying the plaintiff lands by setting up shop and trading in the plaintiff land." It is also alleged in the plaint that he gave notice for the surrender of the land on the 4th September 1908. The 1st defendant did not appear to contest the suit. The 2nd defendant denied plaintiffs' right to the land and alleged that he was holding it on lease under one Somasundara Vathiar. The latter person was subsequently made a party to the suit as 3rd defendant. He supported the contention of the 2nd defendant and alleged that the land -belonged to him, and that he and his ancestors had been in possession for a very long period. The District Munsif dismissed the suit finding that the land never belonged to the plaintiff and that the 3rd defendant had been in possession prior to the suit for more than 12 years. The Subordinate Judge on appeal reversed the Munsif's decree holding that the plaintiffs' title was proved and also the lease by him to the 1st defendant in 1888. He also found that rent was paid to the plaintiffs by 1st defendant till 1894. He was of opinion that it must be presumed, though the 3rd defendant had been in possession after 1894, that he must have derived his possession from the lessees who entered on the land under plaintiff. The 2nd and 3rd defendants appealed to this Court, a finding was called for on two issues:

(1) How long 1st defendant or any person who derived his possession from or through him continued to be in possession? and

(2) When and how 3rd defendant obtained possession of the land?

8. The present Subordinate Judge has submitted findings on these two issues. They are to the effect that the 1st defendant and his sub-lessee were in possession till the year 1892, that one Korangu Samu was in possession thereafter till shortly before December, 1895 and that it was not shown that he held under 1st defendant or his sub-lessee, that 3rd defendant came into possession, at any rate, sometime prior to December 1895, that it was not shown that he obtained possession from or under plaintiffs' lessee or sub-lessees, and that he was in possession in his own right and on his own account. On these findings, it is contended by Mr. T. Rangachariar, the learned Vakil for the respondent, that the Subordinate Judge's decree in plaintiffs' favour must be maintained. He contends that as plaintiffs' lessee held over and paid rent to plaintiff after the expiration of the period of the lease originally given to him, he became a tenant from year to year, that this tenancy was never terminated by notice given either by the plaintiff or by his lessee until the plaintiff did so shortly before the suit, that the possession of the 3rd and 2nd defendants, though it might have been adverse to plaintiff's lessee, could not become adverse to

plaintiff himself until the lease to his lessee was terminated by notice and the 3rd defendant did not, therefore, acquire any right against him by limitation. He also contends that the onus was on the 3rd defendant to prove that his possession was not derived from plaintiffs' lessee and that the present Subordinate Judge ought to have presumed that his possession was not adverse even to the lessee. On the latter question, we intimated our opinion at the hearing that we were not prepared to dissent from the finding of the Subordinate Judge. Possession held by a person must be held to be in his own right even in cases that are governed by Article 144 of the Limitation Act, in the absence of any evidence to the contrary or any relationship between the parties or other circumstances that would throw on him the onus of "proving that he intended to hold possession in denial of the owner's right. I do not consider it necessary to make any further observations on that point. The question for decision, therefore, is what is the rule of limitation applicable to a case where a person ousts from possession one holding land as tenant of another and the owner institutes a suit for recovery of the land against him, more than 12 years after the dispossession of the tenant. It is admitted that Article 139 of the Limitation Act is not applicable to such a case as it relates only to suits by a landlord to recover possession from a tenant, in which; case the period of 12 years' limitation will commence to run when the tenancy is determined, It is contended for the appellant that Article 142 is the one properly applicable to the case, "for possession of Immovable property when the plaintiff while in possession of the property has been dispossessed or has discontinued the possession, and that the plaintiff was dispossessed when his tenant was deprived of possession." The respondent contends that the dispossession of the tenant would not be dispossession of the landlord and that Article 144, the residuary Article, relating to suits for possession of Immovable property or any interest therein, is the one that is applicable to the case. Assuming that the latter Article should be applied, it would make no difference in this case if the 3rd defendants' possession is held to be adverse to the plaintiff. The finding of the Appellate Courts that 3rd defendant held possession of the land in his own right as owner, claiming it as part of his own ancestral property. There can, therefore, be no doubt that so far as his animus was concerned, he did not claim a mere tenancy over the land or anything less than the absolute ownership over it. His possession, therefore, would be adverse to the plaintiff unless it can be held as a matter of law that so long as the plaintiff did not terminate his tenant's holding by giving him notice to quit, 3rd defendant's possession could not be adverse to him. This is, in fact, the contention strenuously urged by Mr. Rangachariar. A person who has given the lease of his land to another is in the eye of the law a reversioner. Article 140 provides that in a suit by a remainder-man or reversioner for possession of Immovable property, the starting point is when his estate falls into possession and Article 141 makes special provision for a suit by one particular class of reversioners, viz., by "a Hindu or Muhammadan entitled to the possession of Immovable property on the death of a Hindu or Muhammadan female." Now Article 140 exempts from its scope a "landlord," by providing that it applies only to a suit by a reversioner

other than a landlord. If it was intended that limitation should always start in the case of a suit by landlord against one who is not his tenant only " when his estate falls into possession," it is not apparent why the statute expressly exempts a landlord from the class of persons to whom Article 140 is applicable, That Article does not apply to a suit against a tenant as Article 139 provides for such a suit. The inference to be drawn from Article 140 appears to be that in a suit against a trespasser by one who had leased his land to a tenant, limitation is not postponed necessarily until his estate falls into possession. If the trespasser asserts only a right of tenancy then, no doubt, limitation would not commence against the landlord until the tenancy (if his right to it is complete) has come to an end. If he has not acquired by his adverse possession the right of a tenant under the statute, then Article 144 would be applicable, his possession being regarded as adverse to the lessor only when the latter's estate falls into possession. But what is the result if the trespasser has, during the period of his possession, claimed to hold as absolute owner. This respondent contends that notwithstanding such claim, the law will not regard his possession as adverse to the lessor but only to the lessee and that the lessor could not maintain a suit in ejectment against a trespasser until the tenancy of the lessee is terminated by efflux of time, by notice to quit or in some other manner provided by law. It is argued that it would be illogical and unjust to the lessor to hold that the trespasser's possession could be adverse to him. This argument would be entitled to much weight if it could be regarded as correct to lay down that a landlord could not sue a trespasser for possession until he has terminated the tenancy of the lessee. The question, therefore, is, Is a landlord always incapable, unless he has terminated the tenancy of a lessee who has been ousted from possession by a stranger, of maintaining a suit for recovery against the latter? It is clear that a trespasser could not maintain such a proposition on the ground of privity with the tenant as he claims to hold against the tenant. The plea must be based on the broad ground that the plaintiff in a suit for ejectment must always establish his own present title to possession and that the trespasser defendant is entitled to set up the right of any third person to possession as against the plaintiff. Such a proposition, though at one time regarded as thoroughly well established, is no longer regarded as universally true, it being now recognized that the plaintiff in a suit in ejectment has only to prove a better title to possession than the defendant. Would this not be done by his showing that he was in possession through his tenant and could it not be held that such possession is enough to entitle him to recover as against the trespasser, though he might not be entitled to retain possession if his tenant claimed it against him on the ground that the tenancy had not been terminated according to law? Article 140 would seem to proceed on the basis that a trespasser's possession might be a disturbance of the right to possession not only of the tenant but of the landlord. In *Krishna Gobind Dhur v. Hari Churan Dhur* 9 C.P 367 : 12 C.L.R. 19 Wilson, J., observed: "Probably in this Article,(i.e., Article 140), the expression other than a landlord, means "other than a landlord as such suing his tenant"." With all respect, it is difficult to accept this contention as Article 14G is

intended to apply to suits by remainder-men and reversioners against all persons including trespassers, and not merely against persons holding a limited estate on the expiration of which the remainder or reversion falls in.

9. In cases falling u/s 335 of the Civil Procedure Code, the High Courts have held in various cases that when a lessee is evicted by a purchaser in execution of a decree, the landlord is also to be regarded as evicted and may apply for relief under the section. See *Braja Bala Devi v. Gurudas Mundal* 33 C. 487 : 3 C.L.J. 293 in which the previous decisions are collated. Again it has been held that where a tenant is ousted by a trespasser, the landlord may institute a summary suit for possession u/s 9 of the Specific Relief Act. See *Rangaswami Iyengar v. Krishna Govinden* (1910) M.W.N. 838 : 8 Ind. Cas. 844 : 9 M.L.T. 205; *Jagannatha Charry v. Mama Bayer* 28 M.K 238 and *Innasi Pillai v. Sivagnanam Desikari* 5 M.L.J. 95.; In *Ammu v. Ramakrishna* 2 M.P 226 this Court held that where the mortgagee's tenants were dispossessed by the Government and subsequently held as tenants of Government, their possession as tenants of Government would be adverse not only to the mortgagee but to the mortgagor also. The learned Judges, Turner, C.J., and Muthuswami Aiyar, J., observed: "We cannot assent to the contention that so long as the mortgagor is entitled only to the equity of redemption, there can be no invasion of his interest. Of course, there may be cases in which the estate of the mortgagee is alone the subject of trespass and the interest of the mortgagor is not assailed. The title by prescription may be acquired to the estate of the mortgagee leaving the interest of the mortgagor unaffected, e.g., where a wrongful claimant establishes himself in the place of the mortgagee admitting the interest of the mortgagor and claiming rights only on the footing of the mortgage. But there are other cases in which the rights and interests of the mortgagor and mortgagee are equally invaded, e.g., when under a sale for arrears of revenue the purchaser acquires possession and thenceforward holds adversely both to the mortgagor and mortgagee or when the mortgagor has remained in possession and a stranger ousts him from the lands." The learned Judges go on to say: "Where the mortgagee has made over possession to the mortgagee, if the interest of the mortgagor be invaded although he has not actual possession of the land, he cannot bring a suit for redemption against the wrong doer, but a suit for the recovery of the interest from which he has been ousted according as he has, or has not been actually dispossessed of the land. The limitation which would have applied to his suit under the Act of 1871 is prescribed by Clause 143 or 145 to the second Schedule of the Act." The same view was held by the Bombay High Court in *Chinto v. Janki* 18 B.K 51 dissenting from the earlier decision in *Vithoba v. Ganga Ram* 12 B.H.C.R. 180 and agreeing with *Ammu v. Ramakrishna* 2 M.K 226 and *Puttappa v. Timmaji* 14 B.P 176. Foulton, J. no doubt, observed that the ouster of the mortgagee unaccompanied by any further acts of aggression cannot give any cause of action to the mortgagor, and he thought that the principle laid down in *Scott v. Newington* 1 M. and R. 253 viz, that where the pledgee of goods in his turn pledges them and the goods ultimately find their way to a stranger,

the pledger would be entitled to recover them against a stranger, might not be applicable in India; and Telang, J., observed that according to English Law ejectment against a stranger cannot be maintained in the name of the mortgagor except, perhaps, in circumstances similar to those in which the action might be maintained against the mortgagee himself, i.e., after payment of the mortgage-money. The learned Judge observed that though the rule in English Law is due to the fact that the legal title is, under English Law, conveyed to the mortgagee, still it would seem that the same rule ought to be applied in India also. Both the learned Judges, however, were of opinion that the trespasser might prove that his possession was in fact adverse to the mortgagor also. The position of a landlord, with respect to his right to eject a trespasser, would seem to stand on a better footing than that of a mortgagor would generally stand. The mortgagor, when he gives possession to the mortgagee, has generally no interest in the land until the mortgage is redeemed. But the lessor is entitled to receive rent from his tenant. If the latter is ousted by a stranger, he cannot claim to recover rent against that stranger. Would it be right then to say that he cannot also get back possession of his land from him? Suppose the tenant is in insolvent circumstances. He would then be unable to recover his rent unless it be by obtaining a decree against the tenant and putting up the tenancy to sale. Suppose the tenancy is for 50 years and the tenant after his dispossession continues to pay the rent for 12 years but fails to do so subsequently. If the landlord has no right to recover possession against the trespasser, then it would seem that the landlord would not have any remedy at all for the recovery of his rent. For it would seem that a person who acquires a title by adverse possession against a tenant is not bound to fulfil the obligations of the tenant that arise out of his contract with the landlord. See *O'Connor v. Foley* (1905) 1 Irish Rep. 1. There appear to me to be weighty reasons for holding that as against a stranger, a landlord is entitled to recover possession even though his tenant's lease has not been terminated. In *Bissessuri Dabee v. Baroda Kanta Roy Chowdry* 10 C.P 1076 it was held that a landlord could claim against a trespasser that possession of the land should be given to his tenant. In *Sarat Chundra v. Naritya Gopal* 13 C.L.J. 284 : 8 Ind. Cas. 47 the same view was maintained. There is no inflexible rule of law that a trespasser can refuse to give up possession to a plaintiff, simply because a third party may be entitled to possession as against him (the plaintiff). Thus, there are cases where beneficiaries may sue to compel a trustee to restore possession to the trustee; a senior member of a Malabar tarwad is in some cases entitled to recover possession from a person wrongfully holding the property of the tarwad, although after getting possession, he may be bound to give up the property to the karnam. In *Womesh Chunder Goopto v. Raj Narain Roy* 10 W.R. 15 a majority of the Court held that the possession of a trespasser would not be adverse to the landlord during the currency of an under-tenure but this decision was passed while Act XV of 1859 was in force when there was no indication of the adoption of a contrary view by the Legislature such as we observe in Article 140 of the later Limitation Act. A contrary view was taken, on the other hand, in *Lekhraj Roy v. Court of Wards* 14 W.R. 395 and *Brindabin*

Chunder Sircar Chowdhry v. Bhoopal Chunder Biswas 17 W.R. 377.; In Krishna Gobind Dhar v. Hari Churn 9 C.P 367 : 12 C.L.R. 19 already referred to, it was held that the landlord was not bound to sue the trespasser before the termination of the lease to his tenant. That case was followed in Sharat Sundari v. Bhobo Pershad 13 C.K 101 but there the trespasser asserted only a tenancy right though not on the terms on which the landlord had leased land to, his real tenant. See also Gunga Kumar Mitter v. Asutosh Gosami 23 C.p 863. On the other hand in Gobinda Nath Shaha Chowdhry v. Surja Kanta Lahiri 26 C.P 460 Bannerjee and Rampini, JJ. held that the trespasser's possession was adverse when the landlord sued for possession after obtaining relinquishment of his tenant's right and the learned Judges distinguished the earlier cases in Sharat Sundari v. Bhobo Pershad 13 C. 101 and Gunga Kumar Mitter v. Asutosh Gosami 23 C.P 863. In Kishwar Nath Sahai Dey v. Kali Sankar Sahai 10 C.W.N. 343 in which the facts were very similar to those in the present case, it was held that the trespasser's possession might be adverse to the landlord.

10. The learned Judges held that the principle of the decisions in Krishna Gobind v. Hari Churn 9 C.P 367 : 12 C.L.R. 19 and Sharat Sundari v. Bhobo Pershad 13 C.K 101 was not applicable where the tenancy is one from year to year inasmuch as the landlord could have determined such annual tenure if he were so minded." They directed an inquiry into the question whether, as a matter of fact, the trespasser did hold adversely to the landlord. In Thamman Pande v. The Maharaja of Vizianagaram 29 A.P 593 : (1907) A.W.N. 185 : 4 A.L.J. 726 the Allahabad High Court preferred to hold that the landlord's cause of action against a trespasser would not arise until the tenancy was terminated. The learned Judges draw attention to the observations of Markby, J., in Bejoy Chunder Banerjee v. Kally Prosonno Mukerjee 4 C.P 327 where that learned Judge said: "By adverse possession I understand to be meant possession by a person holding the land on his own behalf, or some person other than the true owner having the right to immediate possession." But the whole question is whether or not a landlord should be held to be entitled to recover possession against a stranger, notwithstanding that the tenant might be entitled to it as against the landlord. In Ramanadan Chetti v. Pulikutti Servai 21 M.P 288 this Court, no doubt, held that where there is a lease for a term outstanding, the landlord cannot seek to recover possession as against the trespasser during the currency of the term. See also Mola-mal Illath v. Secretary of State 19 M.L.J. 347 : 4 Ind. Cas. 30 : 5 M.L.T. 213 and Narain Das v. Lalta Prasad 21 A.P 269.

11. But in this case, as in Kishwar Nath Sahai Dey v. Kali Sankar Sahai 10 C.W.N. 343 there is no outstanding lease for any definite term. It may be doubted whether the decision in Ramanadan Chetti v. Pulikutti Servai 21 M.P 288 is in accordance with the view held both by this Court and by other High Courts, that a suit u/s 9 of the Specific Relief Act may be maintained by the landlord against a trespasser and that the landlord can ask for relief u/s 335 of the CPC when his tenant is ousted from possession. On the whole, I am inclined to hold that the landlord's cause of action against a trespasser arise when his tenant is

dispossessed if the trespasser claims to hold the land adversely both to the tenant and to the landlord. The difficulty has been avoided in England by appropriate statutory provisions. There in the case of a tenancy from year to year or other period, the landlord's right to enter accrues at the end of the first year or other period from the last receipt of rent whichever last happens and he has 12 years from that time in which he has to assert his right. Under the old law, the landlord might re-enter at the expiration of his lease or within 20 years from that time even though he had during the lease discontinued the receipt of rent from his tenant. Now, if he has discontinued receipt of the rent, he has 12 years from such discontinuance. Both in England and in this country, an equity of redemption and the right of a landlord as reversioner might be acquired by prescription by a stranger even though the mortgage or tenancy may not have come to an end. It seems to be in accordance with this principle to hold that the equity of redemption or reversion might be extinguished during the continuance of the mortgage or tenancy, though it may not vest as such equity or reversion in the person.

12. The decision of this case, however, need not necessarily be rested on the conclusion I have arrived at on the general question as to the time from which limitation will run against a landlord in a suit against a trespasser. It would appear that in this case the tenant completely abandoned possession of the land in 1892 without paying any rent to the plaintiff, though he did not give any formal notice to him intimating his intention not to hold further as a tenant. In such a case, where the tenancy is only from year to year, it can hardly be said that the tenant had any right which he could successfully assert against his landlord. As pointed out in 15 American Cyclopaedia of Law and Procedure: "An outstanding title sufficient to defeat an action of ejectment must be one which has a present subsisting and operative legal force." *Ram Chung v. Gora Chand Chung* 24 W.R. 344.

13. There is yet another ground on which the plaintiff must be held not entitled to recover, If was not his case that the 3rd defendant acquired the title of the tenant by prescription and that he terminated the tenancy thus acquired by proper notice to quit. In paragraph 5 of the plaint he alleged that the 2nd defendant was somehow holding the land and that he had no right whatever in the plaint land. The title by prescription was acquired by the 3rd defendant and not by the 2nd. The latter was only holding under the former. Admittedly no notice terminating the tenancy was given to the former.

14. In the result, the second appeal must be allowed.

15. I concur in the decree proposed by my learned brother.