

(1919) 06 CAL CK 0048
In the Calcutta High Court

Baikuntha Nath Sarma and Others

APPELLANT

Vs

Chaitanya Charn Choudhury and Others

RESPONDENT

Date of Decision : 24-06-1919

Acts Referred:

Citation : AIR 1919 Cal 66 : 52 Ind. Cas. 936

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—This appeal is preferred by the plaintiffs who, after getting a decree in the Court of first instance, had their suit dismissed by the lower Appellate Court on the ground that it was barred by limitation. The plaintiff's case is that the land was in actual possession of their tenant, defendant No. 6, who was at first joined with them as plaintiff. The lower Appellate Court has found that this defendant was dispossessed from the land by the principal defendant sometime not later than the year 1902.

2. The point pressed in this appeal is that this dispossession of the tenant by a trespasser could not affect the title of the plaintiffs, who are the lessors of the person who has been ejected. The principle on which this contention is based is clearly established and the latest case in which the authorities are reviewed is that of Hajra Sardara v. Kunja Behari Nag 40 Ind. Cas. 271 : 21 C.W.N. 1001 : 25 C.L.J. 635, There the principle is stated in the following terms, where property is let out in lease, the possession of the trespasser does not become adverse as against the lessor until the termination of the lease. Though there is this general rule, it is one to which there may be exceptions under certain circumstances and it appears to me on the finding of the lower Appellate Court that this is one of the oases to which the general rule is not applicable. In the case of Kishwar Nath Sahi Dev v. Kali Sankar Sahai 10 C.W.N. 343 after stating the general rule it is pointed out that when the lease has expired and the tenant is holding over with the landlord's consent and the possession of the trespasser is adequate in continuity, in publicity and in extent so as to show that it is possession adverse

to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment and his right to sue will be barred after 12 years of such possession. It is not in every case where a tenant has been holding over that the general rule is inapplicable, but it seems to me on a consideration of the authorities that the general rule would be inapplicable in a case where the tenant is holding over and the dispossession of that tenant is brought to the knowledge of the landlord for a sufficient period to give the trespasser the statutory title. If the landlord has the right to take possession and knows that the person in possession is not his tenant, the possession of the person in possession under, such circumstances would be adverse to the landlord's interest. Here admittedly the tenant was holding over, and it is found by the final Court of fact that the principal defendant's possession was adverse, open and public and so perfected his statutory title.

3. I, therefore, hold that this appeal fails and must be dismissed with costs.