
(1920) 04 CAL CK 0014
In the Calcutta High Court

Baikuntha Nath Sorma and Another APPELLANT
Vs
Chaitanya Charan Chaudhury and Others RESPONDENT

Date of Decision : 29-04-1920

Acts Referred:

Limitation Act, 1908 — Article 144
Transfer of Property Act, 1882 — Section 118

Citation : 57 Ind. Cas. 994

Hon'ble Judges : Asutosh Mukerjee, C.J.; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mukerjee, C.J.—This is an appeal under Clause 15 of the Letters Patent from the judgment of Mr. Justice Newbould in a suit for ejectment.

2. The Court of first instance held that the plaintiffs were entitled to recover possession through their tenant, the sixth defendant, who had been wrongfully dispossessed by the other defendants. Upon appeal that decree was set aside by the Subordinate Judge on the ground that the suit was barred by limitation. Mr. Justice Newbould has accepted the view of the lower Appellate Court upon the question of limitation and has affirmed its decree. We are of opinion that this conclusion cannot be maintained.

by section 118 of 3. The land was first let out to the sixth defendant by the plaintiffs for a term of one year in 1901. On the expiry of the term the defendant continued in occupation upon payment of rent to the landlord, that is he held over, as contemplated by Section 118 of the Transfer of Property Act, which reproduces the pre-existing law as enunciated in a long series of decisions reviewed in Paramananda Singh v. Syjou Singh 37 Ind. Cas. 201 : 24 C.L.J. 30. While the lessee was so holding over he was dispossessed by the other defendants. Consequently this suit is governed by Article 144 of the Schedule to the Indian Limitation Act and the plaintiffs are entitled to succeed, unless the trespasser defendants have acquired a title by adverse possession for the statutory period as against them. It has been found by the Courts below that the

tenancy of the sixth defendant is still in operation, consequently the title of the plaintiffs has not been extinguished by adverse possession of the trespasser defendants as against the sixth defendant. This view is supported by a long line of cases in England *v. Roue* this Court; one of the most recent of these is the judgment of my learned brother Mr. Justice Fletcher in *Hajra Sardara v. Kunja Behari Nag Chowdhury* 40 Ind. Cas. 271 : 21 C.W.N. 1001 : 25 C.L.J. 635 where reference is made, amongst others, to the decision of Sir Barnes Peacock, C.J., in *Davis v. Kazee Abdool Hamed* 8 W.R. 55. and *Wometh Chunder Goopto v. Raj Narain, Roy* 10 W.R. 15. See also *Walter v. Yalden* (1902) 2 K.B. 304 : 71 L.J.K.B. 693 : 87 L.T. 97 : 61 W.R. 46 : 18 T.L.R. 668, *Poole v. Griffith* (1864) 15 Ir. C.L.R. 270, *Huronath Rai v. Indu Bhoosun Deb Rai* 8 W.R. 135. On behalf of the respondents, reliance has been placed upon the case of *Kishwar Nath Sahi Dev v. Kali Sankar Sahai* 10 C.W.N. 34 which was followed in *Ambalaiana Chetty v. Singaravelu* 15 Ind. Cas. 146 : (1912) M.W.N. 630, and the argument has been advanced that as the tenant defendant was holding over from year to year, as soon as the plaintiffs discovered that he had been dispossessed by the trespasser defendants, it became incumbent on them forthwith to terminate the tenancy and to sue the trespasser in ejectment. There are expressions in the judgment of Sir Francis Maclean, C.J., which may lend some support to this contention, but we are of opinion that this view cannot be maintained on principle and is in reality opposed to the decision in *Davis v. Kazee Abdool Hamed* 8 W.R. 55, which shows that there is no distinction in the application of this well known doctrine between a case when a tenant is dispossessed during the term of his tenancy and a case where the tenant is dispossessed while holding over after the expiry of the term. The position may be different where there are successive leases, and much may be urged in support of the view that if on the actual termination of one of the leases, the landlord grants a fresh lease without exercising his right to sue for ejectment forthwith vested in him, time will begin to run against him from that date, *Ahmadi Begum v. Mahasay Taraknath Ghose* 21 Ind. Cas. 233 : 18 C.L.J. 399 : 17 C.W.N. 1173, *Ecclesiastical Commissioners of England v. Rowe* (1880) 5 App. Cas. 736 : 43 L.J.Q.B. 771 : 48 L.T. 353 : 29 W.R. 159 : 45 J.P. 36, *Kennedy v. Woods* (1868) 2 I.R.C.L. 436. There is no real analogy between such a case and a case where a lease from year to year intervenes between the landlord and the trespasser.

4. The result, is that this appeal is allowed and the decree of the Court of first instance restored with costs in all the Courts.

Fletcher, J.

5. I agree.