
(1950) 11 OHC CK 0008
In the Orissa High Court
Case No : Second Appeal No. 299 of 1947

Bholanath Panigrahi

APPELLANT

Vs

Shyamsundra Bose and Others

RESPONDENT

Date of Decision : 07-11-1950

Acts Referred:

Limitation Act, 1908 — Article 142 , 144

Citation : AIR 1951 Ori 235 : (1951) 17 CLT 85

Hon'ble Judges : Panigrahi, J; Jagannadha Das, J

Bench : Division Bench

Advocate : L.K. Das Gupta, for the Appellant; M.S. Rao and B.K. Basu, for the Respondent

Final Decision : Allowed

Judgement

Panigrahi, J.—This is an appeal against the reversing judgment of the Subordinate Judge, Cuttack, directing the dismissal of the pltf's suit for ejectment & damages. The facts - which are not in dispute - are that one Bai Panigrahi, an ancestor of the pltf & defts 2 to 6 who constitute one family, purchased some lands by two registered kabalas dated 27-8-1914 & 24-7-1917 from one Burunda Nalk & his son respectively who were then the recorded tenants of those lands. The lands appertained to khata No. 249 in touzi No. 2219. As a result of the partition of the touzi the disputed plot fell in the separated touzi No. 7288 which was purchased by deft 1 at a revenue sale on 18-3-1918. In the Current Settlement the suit plots, which measure 70 decimals, were recorded in Khata No. 120 & in the remarks column the transferee's name was noted as being in possession by virtue of the two kabalas mentioned above. Deft 1 the landlord of the separated touzi brought rent suit in the year 1938 against Bhagat, son of Padi, & obtained a rent decree in Rent Suit No. 4078 of 1938-39. The holding was put up to sale in execution & purchased on 25-10-1938 by deft 1. In due course deft 1 took delivery through Ct on 26-1-1940. The pltf, therefore, filed the suit in 1944 for a declaration of his title

& for possession with mesne profits. The pltf's case is that he has acquired, occupancy right by reason of his adverse possession against the landlord for over twelve years & that the decree obtained against the original tenant, who had his right in the holding at the time of the suit, is not binding upon the pltf. The main contention on behalf of the first deft was that the pltf was never in possession of the disputed lands.

2. Both the Cts below found that the pltf entered into possession under the sale-deeds mentioned above & was in possession right up to deft 1's purchase of the suit lands in rent Ct sale. The primary Ct further held that the pltf's possession since 1917 - when the disputed land became a separate holding - was adverse to the landlord & that he had acquired an occupancy right by being in adverse possession for over twelve years before the rent suit. The appellate Judge, however, differing from the trial Ct, held that the pltf should prove adverse possession for twelve years from the date of the auction-sale in favour of deft 1, in order to succeed in the suit. In the view of the lower appellate Ct the pltf was an unrecognised transferee & the decree against the recorded tenant was a valid decree. He further held that the pltf's possession as a tenant of the land & his payment of water-tax cannot be said to be adverse as it had not been brought to the notice of deft 1 nor could any knowledge be imputed to him. In any event, knowledge of deft 1 can be said to have commenced from the date of publication of the Current Settlement Record of Rights, & not before that. In this view of the facts the appellate Ct reversed the judgment of the learned Munsif & dismissed the pltf's suit.

3. The only point that falls to be considered in second appeal is whether the pltf has acquired the status of an occupancy raiyat by reason of his adverse possession for over twelve years prior to the date of the rent suit. Mr. Das Gupta learned counsel for the pltf-applt contends that it is not necessary for the pltf to establish that the landlord had knowledge of his possession which was adverse since its inception as he had purchased a non-transferable holding. It cannot be seriously challenged that the suit plots were recorded! as complete holdings in the separated touzi after the partition of the original touzi, & that the landlord was sixteen-annas landlord of the tenant who was the full owner of the holding. If, therefore, the original tenant is shown to have lost possession to a trespasser who completes his title by being in possession for over twelve years, it cannot be said that the holding is still represented by the original tenant who has completely lost his title after the expiry of twelve years. It is also urged that if the possession is overt, the landlord must be deemed to have had knowledge unless he is kept out of such knowledge by some attempt at concealment on the part of the possessor. This argument is met by Mr. Rao, learned counsel for the resp, by the contention that the alleged adverse possession of the pltf is only an encumbrance on the holding which is voidable by the auctionpurchaser & that as in the present case the landlord himself happens to be the auction purchaser there was no need for avoidance. Mr. Rao also attempted to. raise a new point before us that the transferor was all along in occupation of the land as the sub-

tenant of the pltf & he relied upon the evidence of a solitary witness who, in the opinion of the Cts below, had been gained over. Another point that was urged by Mr. Rao is that sale in favour of the pltf's ancestor being only of portions of a holding, the landlord is not bound to exercise his right of re-entry & that the original tenant continues to be liable for the rent. We are satisfied that the last two arguments of Mr. Rao are untenable in view of the admitted facts in this case. The only point, therefore, on which the decision of this appeal should depend is whether the pltf has acquired the right of the recorded tenant by reason of his adverse possession for over twelve years as against the landlord.

4. In order that possession may be adverse it must be actual, exclusive, & adequate in continuity, in publicity & in extent. It was, however, held in some of the reported cases, that such possession should also be to the knowledge of the person against whom possession is asserted. But this view of the law can no longer be maintained as correct in view of the decision of the Judicial Committee in (1934) 66 MLJ 134 (Privy Council) where the contention was raised on behalf of Govt that the adverse possession of the deft was not brought to their notice. Lord Macmillan, after giving a general exposition of the requirements of adverse possession, observed that there was no authority for such a requirement. It was held,

"It is sufficient that the possession be overt & without any attempt at concealment, so that the person against whom time is running ought, if he exercised vigilance, to be aware of what is happening."

This view has been reiterated in a later case of the P. C. reported is AIR 1935 36 (Privy Council) . It is therefore now well established that, in order to constitute adverse possession, it is not necessary that the acts of possession should be exercised to the knowledge of the pltf. When a non-transferable holding is transferred in its entirety, it amounts to an abandonment by the tenant of that holding. The landlord is entitled to exercise his right of re-entry on the date of transfer. The possession of the transferee is adverse from its very inception as he has entered upon the land under a void transaction. Time therefore runs against the landlord from the date of transfer, & if the adverse possessor remains in possession for over twelve years, the title of the tenant is completely extinguished. The landlord's right to recover the same is also similarly extinguished if he does not re-enforce his right to re-enter or recover within the period of limitation. This is the principle laid down in "Probhavati Dasi v. Taibaturinessa 19 CLJ 62: AIR 1914 Cal 196 where Jenkins C. J. observed that the only way of overcoming the bar of limitation would be by establishing a case within Schedule 8, Limitation Act, & that the statute of limitation operates to create a limited interest of tenancy in the person who has been in continuous possession for the requisite period . The case reported in Nalinikanta Mukerji Vs. Gobinda Ramanuje Das, lends support to the contention that time would run against the landlord from the date of his knowledge but that case was not one in ejectment & is easily distinguishable. The case reported in Raja Rajendra

Narayan Bhunj Deo Vs. Nilamani Behera and Others, is more to the point & follows the P. C. view in (1934) 66 MLJ 134 (Privy Council) cited above.

5. Having regard to the concurrent findings of the Cts below that the pltf had been in possession right from the date of his purchase to the date of the rent sale in favour of the first deft, that is to say, for a period of nearly twenty years prior to the institution of the rent suit, it cannot be asserted that the landlord was unaware of time running against him if, by the exercise of ordinary vigilance, he could have known it.

6. Mr. Rao very strenuously argued that the pltf did not file any rent receipts in proof of his possession, but it is not shown that the landlord received any rent from the recorded tenant during this period. The fact that the transferee's name was recorded in the Current Settlement shows he was in possession prior to the date of the Settlement.

7. I have therefore no hesitation in holding that the pltf had been in adverse possession of the suit holding for over twelve years prior to the institution of the rent suit openly & continuously & that he had acquired the tenancy right by such adverse possession. The auction sale of the suit holding did not have the effect of conveying the holding as the pltf was not made a party to the rent suit. The pltf is accordingly entitled to a decree as prayed" for.

8. The judgment of the learned Subordinate Judge is set aside & that of the trial Ct is restored. The appeal is allowed with costs throughout.

Das, J.

9. I agree.