

(1914) 06 CAL CK 0022
In the Calcutta High Court

Gagan Chandra Chuckerbutty

APPELLANT

Vs

Maharaja Birendra Kisore Manikya Bahadur

RESPONDENT

Date of Decision : 01-06-1914

Acts Referred:

Citation : AIR 1915 Cal 690(2) : 30 Ind. Cas. 931

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendant in a suit for declaration of title to land for assessment of rent. The ease for the plaintiff is that he is the proprietor of an extensive zemindari, that there are numerous tracts of waste land within his estate and that various persons, without his knowledge and without settlement from him, have taken possession of these lands and have brought them under cultivation. According to the plaintiff, the defendant is one of such persons, and in 1898, in the course of Settlement proceedings under the Bengal Tenancy Act, it was discovered that the defendant was in occupation of some land without settlement from the plaintiff. The defendant was, however, described in the Settlement record as an intermediate tenure-holder who held without payment of rent. The plaintiff finally states that the defendant, though thereafter repeatedly asked to take a settlement of the disputed land, has, on various pretexts never adorned to him The plaintiff consequently asks that rent may be assessed at the rate of Rs. 2 per high a and prays that for the years antecedent to the suit damages for use and occupation may be decreed at the same rate. The defendant resists the claim on the ground that he has a nishar or rent-free title, that neither he nor his ancestors who were in occupation for many years ever paid rent to the plaintiff and that the claim for assessment of rent is barred by limitation. The Court of first instance found that the defendant held under a rent-free title. The Court also held that if the defendant had no such title, the claim for assessment of rent was barred by limitation. Upon appeal, the Subordinate Judge has held that the fact that the defendant and his predecessors had been in occupation of the land for many years without payment of rent does not show

that the defendant has a rent-free title; he has also held that the claim for assessment of rent is not barred by limitation. In this view the claim of, the plaintiff has been decreed. On the present appeal by the defendant, it has been argued that the claim is essentially one for recovery of possession of land and is barred by limitation, as neither the plaintiff nor his predecessor has been shown to have been ever in possession of the land either directly or through tenants. On behalf of the respondent it has been argued on the authority of the decision in *Nityanund Ghose v. Kissen Kishore* W.R. 1864 Act X Ruling 82 that the defendant was presumably a tenant under the plaintiff, that it is not proved that the defendant at any time set up a hostile title, and that consequently the claim for assessment of rent is not barred by limitation. In our opinion the Subordinate Judge has taken an erroneous view of the relative situation of the parties and that the claim for assessment of rent is clearly barred by limitation.

2. Reliance has been principally placed on behalf of the respondent upon the following passage from the judgment in *Nityanund Ghose v. Kissen Kishore* W.R. 1864 Act X Ruling 82: Here it is a very usual thing for a man to squat on a piece of land or to take into cultivation an unoccupied or waste piece of land. Tenancy, in a great many districts in Bengal, commences in this way, and where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent, when the latter may choose to demand it. Thus, the established usage of the country regards these parties as landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so although he may never have expressly acknowledged the landlord's right or entered into any express contract with him for the payment of rent. If he chooses to cultivate the zemindar's lands, and the zemindar lets him, there is an implied contract between them, creating a relationship of landlord and tenant." Reference has also been made to the dictum of Jackson, J., in *Ranee Lalun Monee v. Bona Monee Dabee* 22 W.R. 334 to the effect that if the parties are in possession, they make themselves tenants by use and occupation of the land. Our attention has also been drawn to the decisions in *Lukee Kanto Dass Chowdhry v. Sumeeruddi, Lusker* 21 W.R. 208 : 13 B.L.R. 243 (F.B.); *Surnomoyee v. Denonath Gir* 9 C. 908 : 13 C.L.R. 69 *Azim Sirdar v. Ram Lall Shaha* 25 C. 324 and *Ishan Chandra Mitter v. Ramranjan Chakarbutty* 2 C.L.J. 125. On the basis of these decisions, it has been broadly contended that if a person squats on the land of another and proceeds to cultivate it, he makes himself a tenant under such person, that although the proprietor does not expressly give permission to the squatter to occupy the land and the latter does not expressly contract to pay rent to the proprietor yet a tenancy is established by presumption, and that it becomes open to the proprietor any length of time afterwards to demand rent from the occupier. In our opinion, this proposition is not deducible from the cases mentioned. It is perfectly plain that if a person squats upon the land of another and if the latter accepts him as his tenant, either

by express declaration or by implication, the squatter acquires the status of a tenant. But it is clearly open to the proprietor to repudiate the tenancy and to evict the person who has come upon the land without his consent. It is further impossible to support on principle the proposition that if a person occupies the land of another, it is open to the proprietor, any length of time afterwards, to treat the occupier as tenant, although the latter has not given any indication that he intended to hold the land as tenant. This is in accord with the decision of *Maharaja Birendra Kisore Manikya Bahadur v. Gagan Chandra Chuckerbutty* 30 Ind. Cas. 902 : 22 C.L.J. 132 and *Mati Lal v. Darjeeling Municipality* 18 Ind. Cas. 844 : 17 C.L.J. 167. There is a further difficulty in the way of the plaintiff-respondent. The principle which he enunciates as deducible from the case of *Nityanund Ghose v. Kissen Kishore W.R. 1864 Act X Ruling 82* applies only to squatters. In the case before us, the defendant was recorded as an intermediate tenure-holder, and, the entries from the Record of Rights, which have been placed before us, show conclusively that there are settled raiyats under the defendant. The defendant, consequently, is not a squatter in any sense of the term, and even if the broad proposition formulated by the respondent were accepted, it would be of no assistance to his case. It is further plain that although the defendant was recorded as an intermediate tenure-holder in the Record of Rights, he has never been treated as tenant by the plaintiff or his predecessors. The plaintiff came into Court on the allegation that the defendant occupied the land without his permission and has never attorney to him; not only was the entry upon the land unauthorised, the defendant when called upon to take a settlement has strenuously refused to accept a tenancy from him. The defendant also does not allege that he was ever a tenant under the plaintiff. Consequently, there is no room for the application of a presumption of tenancy between the parties. If it had been established that the defendant had at any time held as a tenant under the plaintiff or that the plaintiff had accepted the defendant as his tenant, the question might no doubt arise whether the defendant could at a subsequent period effectively set up the plea of adverse possession, when such adverse possession was not brought to the knowledge of the person whom he had acknowledged as his landlord. Here, it is not the case of either party that a tenancy ever existed, and this is emphasised by the fact that although the plaintiff seeks for assessment of rent for the future, in so far as the period antecedent to the suit is concerned, he claims damages for use and occupation on the assumption that up to the date of the institution of the suit at any rate the defendant was not his tenant. The suit is essentially for recovery of possession. It is nonetheless a suit for recovery of possession, though the plaintiff seeks only to have rent assessed. He does not, indeed, claim to evict the defendant and to have actual occupation of the land; but he does seek to have possession by realisation of rent from the defendant. As was pointed out by the Judicial Committee in *Chundrabullee Debia v. Luchhea Debia* 10 M.I.A. 214 : 1 Suth. P.C.J. 602 : 2 Sar. P.C.J. 119 : 19 E.R. 952 and by this Court in *Abhoy Churn Pal v. Kally Pershad Chatterjee* 5 C. 949 : 6 C.L.R. 260 a suit of this character must be treated as a suit for recovery of possession, and the rule of

limitation applicable to suits for recovery of possession must be applied. If the contrary view were maintained, the result would be that a person dispossessed by a trespasser might, any length of time afterwards when a suit for recovery of actual possession would be effectively met by the plea of limitation, maintain a suit for assessment of rent on the allegation that the defendant was his tenant. The plaintiff has not suggested--and even if he had made a suggestion, there is nothing to show that it could have been supported--that he was ever in actual occupation of the land in suit; he has not shown that the possession of the defendant was at any time possession on his behalf; nor has he established that he was in possession of this land by receipt of rent from the defendant within twelve years antecedent to the suit. It is plain that there is no answer to the plea of limitation.

3. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and the suit dismissed with costs in all the Courts.

4. This judgment, it is conceded, will govern the other appeal (No. 1626 of 1911).