

**(1877) 12 CAL CK 0009**  
**In the Calcutta High Court**

Gossain Dass Chunder

APPELLANT

Vs

Issur Chunder Nath

RESPONDENT

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**Date of Decision :** 03-12-1877

**Acts Referred:**

**Citation :** (1878) ILR (Cal) 225

**Hon'ble Judges :** Richard Garth, C.J; Birch, J

**Bench :** Division Bench

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### Judgement

Richard Garth, C.J.—We think there is no ground for this appeal. The plaintiff sued to recover possession of certain rooms in a house, the whole of which he admits to have once belonged to the defendant, but which he says were sold by the defendant to his (the plaintiff's) brother in the year 1857 or 1858, and afterwards fell to the share of the plaintiff in a partition which took place between him and his brother many years ago.

2. The evidence of the purchase of the property from the defendant was so weak that it was rejected altogether by the Munsif (who found in the defendant's favour) and not relied upon by the District Judge (who reversed the Munsif's judgment, and found in favour of the plaintiff). This judgment of the District Judge is based upon the ground that, although the plaintiff may not have legally established the purchase from the defendant in 1857, he has proved that he has been in possession of the property in. question for upwards of twelve years, and this is in fact admitted by the defendant, whose case is, that during that time the plaintiff paid rent to the defendant's mother's sister.

3. The District Judge, under these circumstances, considered, that the plaintiff had made out a prima facie case, by showing that he had been in possession for upwards of twelve years, and that the onus of proving that the plaintiff paid rent during that time, as alleged by the defendant, was upon the defendant. He has further found that, notwithstanding the purchase of the property by the plaintiff was not established, the plaintiff was entitled to a decree for possession upon the strength of his twelve years' possession.

4. The learned Judge in this Court was of opinion, that the District Judge was right in so holding, and we quite agree with him.

5. The plaintiff's case in the first instance was founded not only upon the fact of purchase from the defendant by the plaintiff's brother, but also upon his long possession of the property for upwards of twelve years. The purchase he failed to prove, but the twelve years' possession was established, not only by the plaintiff's evidence, but by the defendant's own admission. It is true that this admission was accompanied by the counter-statement by the defendant, that during the twelve years the plaintiff had paid rent to the defendant's aunt, but the onus of proving this statement was upon the defendant, and he entirely failed to prove it.

6. We have, therefore, a possession by the plaintiff established for upwards of twelve years before the defendant's dispossession, and there is ample authority that such continuous possession for upwards of twelve years not only in the language of the Privy Council in the case of *Gunga Gobind Mundul v. Collector of the 24-Pergunnahs* 11 Moore's I.A. 345 bars the remedy, but practically extinguishes the title of the true owner in favour of the possessor.

7. The construction which this Court has given to the law thus laid down by the Privy Council, is not only that a twelve years' possession by a wrong-doer extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer--see *Amirunnissa Begum v. Umar Khan* 8 B.L.R. 540 S.C. :17 W.R. 119 and *Ram Lochun Chuckerbutty v. Ram Soonder Chuckerbutty* 20 W.R. 104; and this Court has gone still further, because it has held, that the title of the wrong-doer can be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by a twelve years' possession--see *Brindabun Chunder Roy v. Tarachand Bandopadhyaya* 11 B.L.R. 237; 20 W.R. 114. Whether the law as laid down by the Privy Council was meant to have this extended operation, may perhaps be doubted, but such a construction of it tends to convenience in this country, and we are certainly not disposed to question its correctness as applied to the present case.

8. It was strongly contended by the appellant that the plaintiff's suit ought not to have been decreed, because he did not establish his right in the precise way in which it was claimed, and the cases of *Bijoya Debia v. Bydonath Deb* 24 W.R. 444 and *Bamcoomar Shome v. Gunga Pershad Sein* 14 W.R. 109 were relied upon in support of that contention. But these cases were very different from the present. They were cases in which the plaintiffs prayed for a declaration by the Court that they held their land upon a particular title, and as they had failed to establish that particular title, it was impossible of course that the Court could say that they were entitled to it.

9. Here the plaintiff asks for no declaration of title. He seeks to recover possession of property of which he has been dispossessed by the defendant, upon the strength, no doubt, of a purchase made by him, which he has not

proved, but also upon the strength of a twelve years" possessory title, which he has proved, and upon which, for the reasons that we have already given, he is entitled to succeed.

10. The appeal is dismissed with costs.