

(1894) 05 CAL CK 0014

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1850 of 1892

Gossain Mahendra Gir and Others

APPELLANT

Vs

Rajani Kant Das and Others

RESPONDENT

Date of Decision : 01-05-1894

Acts Referred:

Citation : (1894) 05 CAL CK 0014

Judgement

Banerjee, J.—The appeal arises out of a suit for possession of some land, and the only question raised before us, is whether the Lower Appellate Court was right in holding that the suit was not barred by limitation, because the land was in the possession of certain tenants of the Plaintiffs, when the first act of dispossession occurred and those tenants did not relinquish their tenures until the year 1295, which was held within twelve years before the date of the suit. The learned Subordinate Judge in holding that the suit was not barred by limitation has relied upon two cases, viz., Woomesh Chunder Gopto v. Raj Narain Roy¹⁰ W.R. 15 and Krishna Gobinda Dhur v. Hari Churan Dhur ILR 9 Cal. 367, and we may here add that there are two, other cases in which the same view as that in the case of Krishna Gobinda Dhur v. Hari Churan Dhur ILR 9 Cal. 367 is taken. These two are the cases of Sheo Sohye Roy v. Luchmeshur Singh ILR 10 Cal. 577 and Sharat Sundari Dabia v. Bhobo Pershad Kar Chowdhuri ILR 13 Cal. 104. But these are all cases in which the dispossession occurred at a time when the property had been let out to an ijaradar or an under tenure-holder, and it has been held in those cases that no cause of action accrues to the proprietor until the expiry of leases. The present case, however, is of a different character, and that is noticed in the judgment of the Lower Appellate Court. The learned Subordinate Judge observes:- "No doubt in the cases reported, the tenants were ijaradars, and in the present case they are common tenants, but I am of opinion that they make no difference in the application of the rulings. The principle in the case is the same in both cases. In those cases the principle appears to be that a proprietor's cause of action does not arise until the term of the tenant's lease expires, and the proprietor is entitled to possession of the land." In the case of

an estate granted in ijara if the ijaradar goes on paying the ijara rent to the proprietor, though a third person might dispossess the ijaradar, still there will be no interference with the possession of the proprietor; but whereas in this case an estate is in the occupation of ordinary tenants and the defendant has been in possession of the estate, which ordinarily would mean that he is in possession by receipt of rent from those tenants, it is difficult to understand how the proprietor can still say that he is in possession, or that his possession has not been interfered with, unless he is able to show that the tenants had been paying rent to him all the while. Therefore, in a case like the present, before it can be determined whether the suit is barred or not it must be found upon the evidence whether the tenants who were in occupation of the land had been paying rent to the Plaintiffs or to the Defendants. If they had been paying rent to the Defendants and not to the Plaintiffs, possession must be held to have been with the Defendants, and a complete cause of action must be deemed to have arisen to the Plaintiffs. On the other hand, if the Plaintiffs had been in receipt of rent from the tenants, and if such receipt of rent extended to a period within twelve years before the date of the institution of the suit, the suit should not be held as barred by limitation. The learned Subordinate Judge in dealing with the question of limitation has not come to any finding upon the point noticed above. The observations, we should add, apply only to those plots which are alleged to have been in the occupation of tenants, that is, plots ka kha and ga . Therefore as regards those plots we must set aside the decree of the Lower Appellate Court and send the case back to that Court in order that it may deal with the questions of limitation with reference to the directions we have indicated above, and pass a proper decree in the case. If possible the case would be retried by the learned Subordinate Judge who tried it in the first instance. As regards the remaining plot gha the suit of the Plaintiffs must be dismissed.

2. Costs will abide the result.