

(1920) 07 CAL CK 0037
In the Calcutta High Court

Harish Chandra Guha

APPELLANT

Vs

Nripendra Coomar Chakravarti and Others

RESPONDENT

Date of Decision : 05-07-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 66

Citation : 59 Ind. Cas. 719

Hon'ble Judges : Teunon, J;Newbould, J

Bench : Division Bench

Judgement

Teunon, J.—This appeal arises out of a suit brought by the plaintiff to recover possession of a certain holding.

2. The facts, as found by the Courts below, are as follows: The original tenant was defendant No. 6. In execution of a decree for arrears of rent the holding was purchased by the landlord-decree-holder the present plaintiff, the plaintiff was put into possession on the 19th of March 1911, and continued in possession until April 1914 when he was dispossessed by defendant No. 1, the certified purchaser acting in collusion with the other defendants. On these findings the suit was decreed in both the Courts below. Defendant No. 1 now appeals to this Court, and his contention before us is that the suit is barred by reason of the provisions of Section 66 of the Civil Procedure Code. The plaintiff-respondent, on the other hand, contends that Section 66 is not applicable, and further relies on his possession for more than three years after his purchase.

3. In support of the plaintiff-respondent's contention reference has been made to certain observations by their Lordships of the Judicial Committee in the cases reported as Bodh Singh Doodhuria v. Gunesh Chunder Sen 12 B.L.R. 317 (P. C) : 19 W.R. 356 : 3 Sar. P.C.J. 253 and Ganga Sahai v. Kesri 30 Ind.Cas.265 : 22 C.L.J. 508 : 19 C.W.N. 1175 : 18 M.L.T. 203 : 29 M.L.J. 329 : 2 L.W. 837 : 13 A.L.J. 999 : 17 Bom.L.R. 998 : 37 A. 515 : (1915) M.W.N. 713 : 421. A. 177 (P.C.) to the effect that the intention of the Section is to prevent or check benami purchases made by judgment-debtors in fraud of their creditors. But we have not

been referred to any case in which their Lordships have definitely decided that the general language of Section 66 must be restricted to benami purchases made by or on behalf of judgment debtors, while there is a decision to the contrary by a Divisional Bench of this Court in Hanuman Persad Thakur v. Jadunandan Thakur 29 Ind. Cas. 787 : 20 C.W.N. 14 : 43 C. 20 .

4. We have next been referred by the plaintiff respondent to the case reported as Monappa v. Surappa 11 M. 234 : 4 Ind. Dec. (N.S.) 163. It is contended, on the authority of that case, that defendant No. 1 being the father of the plaintiff's tahsildar, his failure to assert his rights against the plaintiffs during the latter's three years' possession should be regarded, as a waiver or transfer. But that case was decided before the Transfer of Property Act and, as pointed out in Bishan Dial v. Ghazi-ud-din 23 A. 175 : A.W.N. (1901) 44, the doctrine therein laid down was disapproved by their Lordships of the Privy Council in Musammat Buhuns Kowur v. Lalla Buhooree Lall 14 M.I.A. 496 : 18 W.R. 157 : 13 B.L.R. 159 : 8 Sar. P.C.J. 69 : 20 E.R. 871 .

5. The question then remains whether plaintiff has acquired title by his possession for three years. In the eye of the law, and on the case of defendant No. 1 that defendant is the purchaser of the holding and raiyat of the plaintiff, plaintiff, the landlord, kept him out of possession for a period of three years. The period of limitation under the 3rd Schedule to the Bengal Tenancy Act in such a case is two years. The title of the defendant has, therefore, been extinguished. In this view, this appeal is dismissed with costs.

Newbould, J.

6. I agree.