

(1925) 05 CAL CK 0023
In the Calcutta High Court

Kajani Kanta Biswas and Others

APPELLANT

Vs

Panchanon Mondal and Others

RESPONDENT

Date of Decision : 28-05-1925

Acts Referred:

Citation : 90 Ind. Cas. 792

Hon'ble Judges : Mukerji, J;Ewart Greaves, J

Bench : Division Bench

Judgement

Greaves, J.

1.This is an appeal by the plaintiffs against a decision of the Subordinate Judge of Nadia reversing a decision of the Munsif, Second Court of Kushtia. The plaintiffs sued to recover possession of mourasi mokarrari lands alleging that they belonged to one Mohan Pramanik and that on his death it devolved on his widow Batna Sundari and that upon her death in 1913 the plaintiffs as reversionary heirs of Mohun were entitled to the properties.

2. Defendants, on the other hand, contended that they had purchased the lands from Bama Sundari for legal necessity and they further asserted that they were co-sharer landlords and that two years' period of limitation provided by Article 3 of Schedule III to the Bengal Tenancy Act applied, and that the suit was, therefore, barred by limitation.

3. The Munsif decided the suit in favour of the plaintiffs. He held that there was no necessity for the sale by Bama Sundari and that no question of limitation arose as there was no dispossession by the landlords. The learned Judge in the Court below has, as I already stated, reversed the decision of the Munsif and he has done so on the ground that the suit is barred by the special Law of Limitation provided by Article 3 of Schedule III of the Bengal Tenancy Act. He has not gone into the merits of the appeal and has simply decreed the appeal on this ground.

4. The plaintiffs were never in possession of the lands in suit and were never dispossessed by the landlords. No, relation of landlord and tenant ever existed

between the plaintiffs and the defendants. But it is urged on behalf of the respondents in this appeal that there has been dispossession by reason of the fact that the landlords refused to allow the plaintiffs to take possession of the lands in suit and it is said that there has, therefore, been what I may describe as constructive dispossession by the landlords on this ground. Reliance is placed on the case of *Nabin Chandra Shaha v. Wajid* 58 Ind. Cas. 598 : 24 C.W.N. 382 : 31 C. L. J. 199. to which we have been referred. Now, as I have already stated the defendants went into possession by virtue of their purchase from Bama Sundari and before her death and they were in possession by virtue of that purchase. The plaintiffs were never in possession and accordingly were never dispossessed. The respondents contend that there has been constructive dispossession. But it has been pointed out more than once in the decisions of this Court that this doctrine should not be extended so as to make Article 3 of Schedule III applicable thereto. Therefore, for the Article to operate there must be actual dispossession by the landlord of the tenant. This being so, in my opinion, Article 3, Schedule III, as no application. So far as the case of *Nabin Chandra Shaha v. Wajid* (1) is concerned one has only got to look into the facts to see that it is quite different from the present case. In that case the heirs had gone into possession of the land on the death of their predecessor-in title and had been dispossessed from the (sic). Consequently in that case there was co possession of the tenants within the meaning of Article 3 of Schedule III of the Bengal Tenancy Act. For the reasons which I have stated I think the learned Subordinate Judge was wrong in saying that the suit was barred by the provisions of Article 3 of Schedule III. If any limitation applies it would be the ordinary rule of 12 years" limitation.

5. I accordingly set aside the decree of the learned Subordinate Judge. As he has never gone into the merits of the appeal the 1 matter must go back to him in order that he may deal with it on the merits

6. Costs of this appeal will abide the result.

7. There is an application in connection with this appeal, it has not been pressed. The respondents Nos. 4, 5 and 6 are not properly represented in the appeal, it is, therefore, dismissed so far as they are concerned.

Mukerji. J.

8. I agree.