
(1902) 04 CAL CK 0007
In the Calcutta High Court

Lalu Sahu and Another

APPELLANT

Vs

Ghunaria Uraon and Others

RESPONDENT

Date of Decision : 29-04-1902

Acts Referred:

Limitation Act, 1963 — Article 142, 144

Citation : 2 Ind. Cas. 381

Hon'ble Judges : Mookerjee, J

Bench : Single Bench

Judgement

Mookerjee, J.—This is an appeal on behalf of the plaintiffs in an action for recovery of possession of a parcel of land in the village S.O.S. which at one time formed the property of two brothers Jadupat and Madhu-pat. Jadupat died in October 1885 and left a widow Ahila-Koer, who died in 1903. Madhupat died in 1893, and left a widow Sham Koer and two sons Kamalapat and Indrapat. Sham Koer died in 1897. On the 31st October 1903, the plaintiffs took a zeri-peshgi of the entire village from Kamalpat and Indrapat and now seek to recover possession of the disputed lands on the allegation that they were in possession as usufructuary mortgagees down to 1905 when they were ousted as the result of a Criminal case. According to their case, upon the death of Jadupat the whole property passed by survivorship to Madhupat and upon, the death of the latter his two sons became entitled to the whole of it. The defendants on the other hand resisted the claim on the ground that Jadupat and Madhupat were separate, that the village belonged to the former and upon his death passed to his widow, Ahila Koer from whose representatives they have derived possession. They also alleged that neither the plaintiffs nor their processors-in-interest had any possession of the property within 12 years of the suit and that consequently the claim was barred by limitation.

2. The Court of first instance found in favour of the plaintiffs upon both the points and made a decree in their favour. The Judicial Commissioner upon appeal has found in favour of the plaintiffs on the question of title, but has dismissed the

suit on the ground that it is barred by limitation.

3. The plaintiffs have now appealed to this Court and the sole question which has been argued before me is whether the decision of the Judicial Commissioner upon the question of limitation can be sustained. On behalf of the appellant it has been argued that as according to the facts found by the Court below the sons of Madhupat did not obtain possession of their father's property, article 142 of the Limitation Act does not apply and that the appropriate article is article 144. In support of this view reliance has been placed upon an observation in the case of *Trilochun v. Nobo Kishore* 2 C.L.R. 10 On behalf of the respondents it has been argued that as the plaintiffs alleged possession and dispossession, their case is governed by article 142, that the plaintiffs are further not in any better position than their mortgagors who would be bound to sue within 12 years from the death of their father; and that even if Article 144 is applicable according to the facts found, the defendants have acquired a good title by adverse possession.

4. Before I determine which of these arguments ought to prevail it is necessary for a moment to consider the findings of the Judicial Commissioner. As I understand his judgment he finds that on the death of Madhupat in 1893 Ahila Koer began to assert a title of her own to the entire village and did so with conspicuous success. In that very year she intervened in rent suits instituted by the sons of Madhupat and did so effectively and there is other evidence to indicate that between her death and the date of the institution of the present suit neither the plaintiffs nor their predecessors were able to obtain possession of the disputed lands. It is further found by the Judicial Commissioner in the concluding portion of his judgment that the disputed lands have been since 1893 in the adverse possession of Ahila Koer and persons claiming under her and after her death in the possession of her heirs. This finding is clear and conclusive though the learned vakil for the appellant tried to make out by reference to isolated passages in the judgment that the judgment was not self consistent I think, an examination of the whole judgment shows that the Judicial Commissioner meant to find that the plaintiffs and their predecessors were in possession and that Ahila Koer and persons claiming through her were in possession for the statutory period. On this finding it is clear that the claim is barred by limitation, whether article 142 or article 144 be made applicable. Under, article 142 every suit for possession of immovable property has to be brought within 12 years from the date of dispossession, when the plaintiff while in possession of the property has been dispossessed. The word plaintiff is defined to include any person from or through whom a plaintiff derives his right to sue. It has been contended with reference to the language of this section that as the sons of Madhupat never obtained possession, this article does not apply. But it is to be observed that, possession does not, in this article, mean actual occupation. That Madhupat was in possession is unquestionable. Immediately upon his death, therefore, the right of possession vested in his sons and when subsequently they failed in their attempt to realise rent by reason of successful intervention of Ahila Koer, it must be taken that they were dispossessed. The case of *Trilochun v. Nobo Kishore* 2

C.L.R. 10 is clearly distinguishable. There upon the death of A his heir found that C was in possession of the estate of A under an alleged deed of sale executed by the latter. It was contended that article 93 of the Limitation Act of 1871 which corresponds to article 95 of the Limitation Act of 1877 was applicable. The Court overruled this contention and observed that article 145 of the Act of 1871 which corresponds to article 144 of the Limitation Act of 1877 was applicable. There the purchaser was in possession (luring the lifetime of A under the alleged deed. His possession as against the heir did not become adverse till he became entitled to claim the property by right of inheritance Here the original owner was in possession up to the moment of his death, and there was no dispossession of his heirs till they became unsuccessful in their rent suit by reason of the intervention of Ahila Koer. Under these circumstances I think it is clear that article 142 is applicable and the suit is barred by limitation. *Mohima Chunder Mozoomdar v. Mohesh Chunder Neoghi* 16 C. 473 : 16 I. A. 23; *Mohammad Amanulla Khan v. Badan Singh* 17 C. 137 : 16 I.A. 148; *Mirza Shamsheer v. Kunj Bohari*. The learned vakil for the respondents also urged that the principle which underlies article 136 of the Limitation Act ought to be made applicable and that the time ought to run against the plaintiffs from the date when their transferor becomes first entitled to possession. In the view I take of the applicability of article 142 it is not necessary to express any opinion upon the question whether article 136 which in terms is applicable to purchasers, covers the case of usufructuary mortgagees. But even if we assume that article 144 applies, the plaintiffs are in no better position. It is found that Ahila Koer was in possession up to the time of her death in 1903 in successful assertion of a hostile title. It is further found that since her death her heirs have been in possession, one of whom, her daughter Jasoda Koer, is a party defendant to this suit. Another defendant, Baij Nath Lal is a grandson by another daughter Saboda Koer. Some of the other defendants are tenants under Ahila Koer and her daughter. Under these circumstances it must be held, as the Judicial Commissioner has done, that the defendants have acquired good title and that the plaintiffs have no subsisting title on the basis of which they can succeed.

5. The result, therefore, is that the decision of the Court below must be affirmed and this appeal dismissed with costs.