

(1928) 05 CAL CK 0023
In the Calcutta High Court

Monmotho Nath alias Moni Mohan Lahiri and Others	APPELLANT
Vs	
Bepin Behary Munshi and Others	RESPONDENT

Date of Decision : 22-05-1928

Acts Referred:

Citation : 117 Ind. Cas. 532

Hon'ble Judges : Mallik, J;Garlick, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for recovery of possession of some land on a declaration of the plaintiff's title thereto. The allegations on which the plaintiff brought the suit were briefly these. The land belongs to one Preonath Lahiri the father of defendants Nos. 1 to 3 and defendants Nos. 17 and 18. In the year 1300 B.S. Preonath sold the land to one Proraotho Nath Ghese. Promotho possessed the land for a short period after which he sold the same to the plaintiff in the year 1302 B.S. After the purchase the land was for some time under the direct management of the plaintiff but as the plaintiff was an inhabitant of Calcutta it was not very convenient for him to look after the property and so he entrusted the management of the property to Preonath who was no other than his sister's husband. After Preonath's death his sons were placed in charge of the property and they continued managing the property for a pretty long term of years. Preonath's sons subsequently colluded with the landlord's gomasta and caused the rent of the holding to fall into arrears. The holding was sold in execution of a rent decree and purchased by Preonath's sons in the name of their servant Sibu Santra. The plaintiff, when he came to hear of the sale, applied for setting it aside and succeeded in doing so. Thereafter, he brought a suit for rent against defendants Nos. 4 to 16 who were the tenants on the land in suit and in this suit the tenant-defendants denied the plaintiff's right, with the result that the plaintiff had to withdraw the suit. On these allegations, the plaintiff brought a suit for a declaration of his right. to the disputed land and for recovery of possession against the sons of Preonath and for khas possesssion as against the tenant-defendants on the ground that they had forfeited their rights as

tenants by their denial of the plaintiff's title. The substantial defence that was set up in the case was that the plaintiff was nothing but benamdar of Preonath and that it was Preonath, and not the plaintiff who was the real owner of the property in dispute, the Court of first instance dismissed the plaintiff's suit. On appeal the lower Appellate Court held that the plaintiff was not the benamdar of Preonath but was the real purchaser and owner of the property in dispute; and on that finding the learned Additional District Judge gave a decree to the plaintiff as against the sons of Preonath but refused the plaintiff's prayer for khas possession as against the tenant-defendants on the ground that nothing had been shown to substantiate the allegation that the tenant-defendants had forfeited their tenancy in any way. Defendants Nos. 1 to 3 have appealed to this Court.

2. The learned Advocate for the appellants first of all contended that the lower Appellate Court was wrong in law when it came to the finding that the plaintiff was the real owner and not the benamdar of Preonath. We do not think there is much substance in this contention. The plaintiff was the person in whose name the property was purchased and if the defendants wanted to establish that plaintiff was nothing but a benamdar" the onus to substantiate that point was on them. The learned Additional District Judge has fully discussed all the circumstances that were present in the case apparently in support, of the defence case on the point that after a full discussion of those circumstances he came to the conclusion that those circumstances were of no avail to the defendants. Over and above that, the learned Additional, District Judge has found as a fact that it was from the plaintiff and not from. Preonath that the purchase-money came. In these circumstances, we do not think it can reasonably be contended for a moment that there is any error of law when the learned Additional District Judge came to the finding that the plaintiff was the real purchaser and the real owner of the property and not the benamdar of Preonath as the defence wanted to establish.

3. The learned Advocate next contended that even if it be accepted as a fact that the plaintiff is the real owner of the property, the plaintiff, before he could succeed, was bound to show that he was in possession of the property within twelve years before the institution of the suit. But the finding of the lower Appellate Court is that if the defendants were in possession of the property, it was nothing but a permissive possession. The learned Advocate took the exception to the finding of the lower Appellate Court as regards permissive possession and he contended that the finding of fact arrived at by the lower Appellate Court was not sufficient to make out a case of permissive possession. In this connection, the learned Advocate drew our attention to the observation of the learned Additional District Judge which runs as follows: "It is clear from the facts and circumstances of the case that the plaintiff, when he left his direct connection with the property in the year 1303, had no idea to possess it or even to claim it and that, therefore, he allowed the defendants and their father to possess the same as he expected that he would get back his money or would be

given some profit at least." But towards the concluding portion of the judgment the learned Additional District Judge has clearly found also that the plaintiff never intended to abandon his right or to create any absolute right in the defendants. In these circumstances we are unable to agree with the learned Advocate in the view that the finding of the fact arrived at by the learned Additional District Judge was not sufficient to make out a case of permissive possession.

4. The third point that was argued before us was in connection with the question of limitation. It was said on behalf of the appellants that Article 142 or 143 Schedule I of the Limitation Act is the Article that would be applicable to the present case. Article 142 cannot, in our opinion, apply to the present case, because the present case is not of dispossession or discontinuance of possession. The defendants no doubt were in possession of the property from about 1303 B.S. but that possession was, as found by the lower Appellate Court, a permissive possession. Article 143 either, cannot apply to the present case. The plaintiff brought the suit not on the allegation of any forfeiture or breach of condition but on the allegation that he had entrusted the management of the property to the defendants and that from about 1915, the defendants began doing acts whereby in a way they asserted a hostile title to the plaintiff. These being the circumstances of the case, the case, in our opinion, would be governed not by Article 142 or 143 but by Article 144 of the Limitation Act. The plaintiff, as the lower Appellate Court has found, is the real owner of the property and if the defendants wanted to defeat his title they could successfully do so only by establishing that the title of the plaintiff had been extinguished by the defendants' adverse possession. It is true that the defendants had been in possession of the property from 1697, and the suit was instituted in the year 1922. But the learned Additional District Judge has found that it was only in the year 1915, that there was something like an assertion by the defendants of a hostile title. If any hostile title was asserted only in the year 1915, the title of the plaintiff could not possibly be extinguished by adverse possession of the defendants, inasmuch as the suit, as observed before, was instituted in the year 1922.

5. All the points that were taken before us, therefore, fail. The appeal is accordingly dismissed with costs.