

(1881) 05 CAL CK 0012
In the Calcutta High Court

Nilmadhub Shaha and Others

APPELLANT

Vs

Srinibash Kurmokar

RESPONDENT

Date of Decision : 26-05-1881

Acts Referred:

Citation : (1881) ILR (Cal) 442

Hon'ble Judges : Pontifex, J;Field, J

Bench : Division Bench

Judgement

Pontifex, J.—It is admitted in this ease, on the findings of the lower Courts, that the plaintiff is entitled to recover, unless he is barred by Section 27 of Beng. Act VIII of 1869 from suing. That section gave him a limitation of one year, and the plaintiff instituted the suit after the expiration of eleven years from the date of the alleged dispossession. Now, taking the words of that Section by themselves, and putting, what I think is, a reasonable construction upon them, it seems to me they do not apply to this case, and the defendants are not entitled to insist upon them. The facts of the case are, that the defendants claim that immediately prior to the dispossession of the plaintiff, adarpatni was created in their favour, and upon its creation they at once proceeded to dispossess the plaintiff from his holding. Now the words of the section are: "All suits to recover the occupancy or possession of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same," should be commenced within one year. It seems to me that the course of action pursued by the defendants in turning out the plaintiff from his occupation immediately their darpatni was created, showed that at that time they did not then admit, that he was a tenant. As he was immediately dispossessed after their title accrued, it is clear that they could neither have received rent from him, nor could he have paid rent to them; and as they did not admit that at that time he was their tenant, I do not think it lies in their mouth now to insist that he was a tenant within the terms , of Section 27; and not being a tenant, the limitation of one year would not apply to the case. There seems to be a question whether these suits u/s 27 are not merely possessory suits. As to that I am not at present

prepared to give any opinion. The appeal must be dismissed with costs.

Field, J.

2. I also think that in this case the defendants cannot be permitted to approbate and reprobate. It appears that, after the grant to them of the darpatni, they ousted the plaintiff without giving him an opportunity of attorning to them and becoming their tenant, and they cannot now be permitted to say that there was a tenancy existing between him and the defendants, for the purpose of obtaining the benefit of the one year's rule of limitation. But it appears to me also, that the one year's rule of limitation provided by Sections 27 of Beng. Act VIII of 1869 was not intended to apply to a case of this kind. The particular words in that section, upon which the defendants rely in this case, are: "All suits to recover the occupancy of any land, farm, or tenure from which a ryot, fanner, or tenant has been illegally ejected by the person entitled to recover rent for the same." In order to understand the meaning of these words, we may examine the history of their use in acts of the Legislature which are in *pari materia*. That history is as follows: Section 23 of Act X of 1859 contained a specification of the different kinds of suits which could be brought under the provisions of that Act, and over which the Revenue Courts were given jurisdiction. Clause 6 of that Section specifies the following suits, viz., "all suits to recover the occupancy or possession of any land, farm or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same." Now, it was decided in the Full Bench case of Gooroo Doss Roy v. Bam Narain Mitter (B. L. R., F. B. Rul., 628; s. c., 7 W. R., Civ. Rul., 187); that these words refer, only to possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title, and seeks to have his right declared and possession given him in pursuance of that title. "Full meaning" said Peacock, C.J., who delivered the judgment of the Full Bench, "may, and we think must be given to the word 'illegally ejected' without treating them as giving a wider sense to the words abovementioned." He then proceeds to give instances of such illegal ejectment," as, for example, when a zamindar ejects a ryot forcibly and without having recourse to the Court; and he concludes thus: "Looking to the whole Act, it appears to us that Clause 6 of Section 23 does not take from the Civil Court the power to try the question of title as between a ryot, farmer, or tenant, and the person to whom he pays rent. It follows, therefore, at in this action, which is brought, setting out a title by the plaintiff", and asking, "under the above facts," to be declared entitled, on the strength of his documents, to recover possession of the lands, he will be entitled, if he makes out his case, to a decree that he be put into possession of the land with mesne profits." See also the following cases decided before the Full Bench decision:-- Bishumbhur Boil v. Okoor Pandey (4 W. R., Civ. Rul., 105), Banee Madhub Banerjee v. Joy Kishan Mookerjee (4 W. R., Act X Rul., 16) ; Lalla Gokool Parshad v. Raja Rajendar Kishore Singh (W. B., 1864, Act X Rul., 4); and the following cases decided after the Full Bench case,--Lalljee Sahoo v. Bhugwan Doss (8 W. B., Civ. Rul., 337), and Dhonaye Mandul v. Arif Mundul (9 W. R., Civ. Rul., 306). In the Full Bench

case--Chunder Coomar Mundul v. Nunnee Rhanum (11 B. L. R. 434)--it was held, that the decision of a Revenue Court in a case under Clause 6, Section 23 of Act X of 1859 All suits for the delivery of pottahs or kubooliyets or for the determination of the rates of rent at which such portahs or kubooliyets are to be delivered as to the genuineness of a mourosi patta, is not res judicata so as to estop a Civil Court from trying the validity of the patta in a subsequent suit in such Court between the same parties or parties under whom they claim. In this case one Baker Ali had sued under Clause 6 of Section 23 to recover possession of land from which he alleged that he had been illegally ousted, and which was included in a certain mourosi patta. The defendants alleged that the mourosi patta was spurious. Baker Ali succeeded, whereupon the defendant brought a suit in the Civil Court to have the patta declared to be spurious document and to recover possession of the land. Jackson, J., doubted if suits under Clause 6, Section 23 of Act X of 1859, were of the nature of possessory suit; but the other Judges who composed the Full Bench were agreed that the decision of the Revenue Court, except so far as it established the right of Baker Ali to the possession of the land when he was ejected, was a finding upon a collateral matter, and had not the effect of res judicata in the civil case.

3. I think the result of these cases is, that a case under Clause 6, Section 23 of Act X of 1859, was very similar in its nature to under the old Section (15) of Act XIV of 1859, now Section 9 If any person is dispossessed without his consent of Immovable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit of the Specific Belief Act, I of 1877; and this, being so, suits under Clause 6 to recover the occupancy or possession of land from; which a ryot has been illegally ejected by the person entitled to receive rent for the same, differ materially from suits like those referred to in the Full Bench case of Gooroo Doss Roy v. Bam Narain Mitter (B. L. R., F. B., Rul., 628; s. c., 7 W. R., C. I. V. Rul., 147),--suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in pursuance of that title. To this latter class the twelve years" rule of limitation is applicable. In the Full Bench case, the suit was instituted by persons who had been ten years out of possession. While to the former class is applicable the one year"s rule of limitation provided by Section 30 of Act X of 1859 Except as otherwise herein provided, all suits instituted under this Act shall be commenced within the period of one year from the date of the accruing of the cause of action. Amended by Act LIII, 1860. Amendment defunct which speaks of " all suits instituted under this Act " any specification being necessary, as such suits had been specified in Section 23. When Beng. Act VIII of 1869 was enacted, the specification of suits contained in Section 23 of Act X of 1859 became no longer necessary. And Act VIII enacted in general terms that all suits brought for any cause of action arising under Act X of 1859 were to be cognizable by the Civil Court according to their several jurisdictions (see Section 33) Suit for the recovery of money in the

hands of an agent of for the delivery of accounts or papers by agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent, or in the case of claims now existing within one year after the passing of this Act, or within the period now allowed for the institution of such suits in the Civil Court whichever may first expire. Provided that if the person having by means of fraud, have been kept from the knowledge of the receipt of any such money by the agent, or if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person; but no such shall in any case (except the case of claims now existing as aforesaid) be brought at any time exceeding three years from the termination of the agency. The object of the Legislature in passing Beng. Act VIII of 1869 was to transfer the trial of rent cases from the Revenue to the Civil Courts, and there was no intention to interfere with the special law of; limitation provided for rent cases by Act X of 1859. In consequence, however, of the omission of the specification of suits in the Act of 1869, it became necessary, instead of the general words "all suits instituted under this Act" in Section 30 of Act X of 1859, to insert in the limitation section (27) of Beng. [447] Act VIII of 1869, a specification of the class of suits to which these special limitation provisions were applicable. Accordingly we find the words of Clause 6, Section 23 of Act X of 1859, "all suits to recover the occupancy [or possession] of any land, farm, or tenure from which ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same," used with the omission of the two words in brackets, in Section 27 of the Act of 1869. It appears to me reasonable to suppose that it was intended by the use of these words to make the one year's limitation provided by the Act of 1869 applicable to the same class of suits only to which Clause 6 of Section 23 of Act X of 1859 had been decided to be applicable, and to which the one year's rule of limitation was applicable, under the same Act of 1859. I find that the same view has been taken by a former learned Judge of this Court (Phear, J. in the case of Nistarini v. Ka(sic) Pershad Dass Chowdhry (23 W. R., 431).