

(1925) 04 PAT CK 0024

In the Patna High Court

Pallakdhari Thakur and Others

APPELLANT

Vs

Bankey Thakur and Others

RESPONDENT

Date of Decision : 21-04-1925

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Limitation Act, 1963 — Section 3

Citation : 89 Ind. Cas. 340

Hon'ble Judges : Kulwant Sahay, J

Bench : Single Bench

Judgement

Kulwant Sahay, J.—This is an appeal on behalf of the plaintiffs against a decision of the Subordinate Judge of Muzaffarpur, dismissing their suit, for possession of 7 bighas and odd land. The plaintiffs contended that they had acquired right, of occupancy in the land and that they were dispossessed by the defendants in 1326 which corresponds to some time in May or June 1919. Their case was that the land in dispute was formerly the holding of certain tenants, and in execution of rent decrees against these tenants, the landlords who are the defendants second party in these suits sold the holding and purchased these in execution and took possession thereof. On the 4th of June 1910, the plaintiffs" took settlement of the land in dispute from these eqid party under a layout in which they described the land as zerait land of the proprietor and the term of the settlement was from the 1317 to Baiaakh 1321 They alleged that they were settled raiyals of the tillage and, although the settlement was for a term of years, yet under the law they acquired a right of occupancy in the land and that they were entitled to retain possession. Their, case was that they Mere dispossessed in May or June 1919, by the landlords, who" gave a settlement of the land to the defendants first party in the year 1326. They accordingly brought the present, suit for possession. Two sets, of " written statements were filed. One by the landlords and the other by the defendants first party, who are the new settlement-holders from the landlords. The landlords in their written statement stated that the plaintiffs were not settled ruiyols of the village and did not

acquire any right of occupancy in the land. They further alleged that the disputed land was settled with: the plaintiffs as zeraf for a period upto 1324 F. S., and that the plaintiffs in accordance with the agreement contained in the kabu-liyat, gave up, possession at the end of 1324 and the landlords, took possession thereof in 125 and settled, the lands with, the defendants first party. They pleaded limitation and want of title in; the plaintiffs. The defendants first party alleged that the, plaintiffs gave up the land in suit jugton the expiry of the term of the kabuliyat and " the defendants took Settlement thereof on. the balai system from the amlas of the landlords and then, in the next year 13 6, they took nakdi settlement under the kabuliyais.

2. The learned Munsif framed a large number of issues in the suit. Issue No. 2 was as to whether the plaintiffs' suit was barred by the Law of Limitation. Issue No. 5 was whether the plaintiffs surrendered the disputed land to the defendants second party after the termination of the, term, of the kabuliyat; and Issue No. 3 was, as to whether the plaintiffs were, the settled raiyats of the villages, and; whether they have got any right in the disputed land. On the question of surrender the Munsif came to a finding that the plaintiffs did not surrender the land after the expiry of the term of the Icabuliyat, but held over and were dispossessed by the defendants after the decision of a case u/s 145 of the Order P.C. which was in May 1919. On the question of. status of the plaintiffs the learned Munsif came to the conclusion that the plaintiffs were settled rdiyats of the village and as such they acquired a right of occupancy in the land in suit. On the question of, limitation the learned Munsif stated that the Pleaders had not addressed any argument on this question. He accordingly decreed the suit.

3. On appeal the learned Subordinate Judge, has. dismissed the suit oil the ground of limitation.

4. Against this decision the present second appeal has been filed on behalf of the plaintiffs and the point taken by the learned Vakil for the appellants is that upon the findings arrived at, the Court below was, wrong in holding that the suit was barred by limitation. It has also faintly been argued, that the question of limitation not being pressed in the Trial Court the learned Subordinate Judge ought not to have allowed the defendants to raise the question on appeal. As regards the last point it is clear that" the question was raised in "the written statement and an issue was framed; and even if it was not pressed in the Trial Court, it was-open to the defendants to press that point on appeal; Section 3 of the Limitation Act and a. 184 of the Bengal Tenancy Act are clear upon the point.

5. On the merits the findings of the learned Subordinate Judge are that there was an ouster of the plaintiffs, that the landlords had a hand in the ouster of the plaintiffs and that the ouster took place more than two years before the suit. Upon those findings the suit was-clearly barred by the provisions of Article 3, Schedule III of the Bengal Tenancy Act.. It has, however, been contended by the learned Vakil for the appellants that the learned Subordinate Judge has come to a finding open a case different from that made by the defendants in their written

statement. He refers to the written statement of the defendants second party, who are the. landlords, where they state that the plaintiffs were in possession up to the end of 1324" and" that land passed into the possession of the landlords afterwards. He points out that the last date of the Fasli year 1324 corresponds to the 1st of September 1917, and. the present suit was brought on the 1st of September 1919 and, therefore, within two years from the date of the ouster and, there fore, the suit was not barred by fimitation Now, although the defendants second party "state that the plaintiffs remained-in possession up to the end of 1324, the evidence given-in the cage was that the plaintiffs remained in possession up to Baisakh, 1324, that is, when the term of the lease expired, the defendants first party in their written statement have expressly stated" that the plaintiffs: gave up. possession immediately after the expiry of, the term of the kabuliyat and that the defendants first party took settlement of the land thereafter. There was evidence in the case at least of three witnesses, namely, the defendants" witnesses Nos. 2, 5 and 6, as would appear on a reference to the decision-of the Trial Court, who stated that the Settlement with the defendants first party was made in Jeth 1324. There was, therefore, evidence in the case upon which the Subordinate Judge could come to a finding that the plaintiffs ceased to be in possession from Jeth 13 24 and the finding of the learned Subordinate Judge, on a consideration of the entire evidence in the case, that the dispossession took place in Jeth 1324, which will be more than two years from the date of the suit, is a finding which would justify the decree made by him.

6. It is next contended by the learned Vakil for the appellants that when there was no issue raised as to the special limitation under Article 3, Schedule III of the Bengal Tenancy Act, and, as there was no such issue raised, the learned Subordinate Judge ought not to have dismissed the suit on a plea of special limitation. The issue as framed did not specify as to whether the plea of limitation was under the Limitation Act or under the Bengal Tenancy Act; but, on the face of the pleadings of the parties," it is clear that what was intended was plea of special limitation under the Bengal Tenancy Act.

7. Under these circumstances and having regard to the findings of the Subordinate Judge, I am of opinion that there are no merits in this second appeal and it must be dismissed with, costs.