

(1920) 04 CAL CK 0011
In the Calcutta High Court

Panchoo Kapali and Others

APPELLANT

Vs

Jajneswar Majhi and Others

RESPONDENT

Date of Decision : 29-04-1920

Acts Referred:

Bengal Tenancy Act, 1885 — Article 3, 185(2)

Citation : 58 Ind. Cas. 844

Hon'ble Judges : Asutosh Mookerjee, C.J; Ernest Fletcher, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, C.J.—This is an appeal under Clause 15 of the Letters Patent from the judgment of Mr. Justice Newbould, in a suit for recovery of possession of land.

2. On the 20th January 1909, the plaintiffs took a lease of 12 cottas of land from the defendants ; they obtained delivery of possession of 7 cottas only, and the defendants, who had their dwelling-huts on the remaining 5 cottas, agreed to vacate that portion after three months. The defendants, however, failed to carry out the terms of the agreement and continued in occupation of the 5 cottas, notwithstanding the lease in favour of the plaintiffs. These facts have been established by the plaintiffs, but their suit has been dismissed as barred by limitation under Article 3 of Schedule III to the Bengal Tenancy Act. That Article provides that a suit to recover possession of land claimed by the plaintiff as a raiyat or an under raiyat must be instituted within two years from the date of dispossession. This plainly implies that, in respect of the disputed land, the plaintiff was previously in possession and that he has been deprived of possession by the defendant.

3. As was pointed out by this Court in *Brojendra Kishore Roy v. Bharat Chandra Roy* 31 Ind. Cas. 242 : 22 C.L.J. 283 : 20 C.W.N. 481 the term "dispossession" impels the coming in of a person and the driving out of another from possession, while "discontinuance" implies the going out of the person in possession and his being followed possession by another.

4. In the present Case, the defendants never placed the plaintiffs in possession of the 5 cottas which is the subject matter of the litigation. Consequently, there was no dispossession, such as would attract the operation of Article 3 of Schedule III to the Bengal Tenancy Act. Section 185(2) accordingly makes Article 141 of the Schedule to the Indian Limitation Act applicable, and the suit is in time, as it was instituted on the 20th May 1916, which is within 12 years from the date when the possession of the defendants became adverse, after the lapse of three months from the 20th January 1909. We cannot possibly accept the argument that there was "dispossession" in law though not in fact, on the 20th April 1909, for this Court has emphatically discouraged recourse to the fiction of "constructive dispossession," which, however attractive, has tended to create much confusion; *Sonatan Shtikh v. Chaku Sheikh* 3 Ind. Cas. 398 : 10 C.L.J. 89; *Basanta Kumari v. Nanda Barn.* 20 Ind. Cas. 350 : 18 C.L.J. 86 : 17 C.W.N. 1149; *Rudra Narain v. Natabar Jana* 21 Ind. Cas. 431 : 18 C.L.J. 89 : 41 C. 52 : 18 C. C.W.N. 358; *Kedar Nath v. Mehesh Chandra* 46 Ind. Cas. 787 : 28 C.L.J. 216.

5. The result is that this appeal is allowed, the decrees of all the Courts are set aside and the suit is decreed with costs in all Courts.

Fletcher, J.

6. I agree.