
(1878) 12 CAL CK 0014
In the Calcutta High Court

Poresh Narain Roy

APPELLANT

Vs

Kassi Chunder Talukdar

RESPONDENT

Date of Decision : 09-12-1878

Acts Referred:

Citation : (1879) ILR (Cal) 662

Hon'ble Judges : Prinsep, J; Morris, J

Bench : Division Bench

Judgement

Morris, J.—The objection taken in special appeal is, that the lower Court has dismissed the suit of ejectment brought by the plaintiff, on the ground that it is barred by the law of limitation owing to the defendant having proved possession of the land in suit for more than twelve years, and that being so it has given a title to the defendant in the land arising out of adverse possession, which is not warranted by its own finding of fact or the pleadings in the cause.

2. The plaintiff derived his title from one Gossain, who was examined as a witness on his behalf. In his judgment the Judge says,—"But this Gossain's deposition, moreover, must be taken as a whole, and it appears to me to be fatal to plaintiff. He says, defendant and his two predecessors never paid him any rent, and it has been proved in the evidence that they have occupied the land for more than twelve years. With regard to what defendant got from Potit Pabun, therefore, I agree, with the Subordinate Judge that limitation bars the suit." It is clear from this that the Judge is of opinion that, whereas the defendant occupied the land for more than twelve years, and during that time never paid rent to the plaintiff or his predecessor on account of it, therefore adverse possession has arisen on the part of the defendant, which has given him an independent title in the land. He appears to think that the non-payment of rent for a term of twelve years and more relieves an occupancy ryot from the status of a tenant. But this is manifestly wrong, for if the defendant recognizes the title of the plaintiff to take rent, the mere fact of the plaintiff abstaining for a number of years from taking it does not in itself create in the defendant an independent title in the

land. As rent falls due year by year, or kist by kist, the failure to pay becomes a recurring cause of action, and, therefore, where the right to take rent is admitted by the ryot-defendant, no question of limitation can arise. But it is said that the defendant raised broadly, in answer to the suit, the plea of general limitation, and so set up an independent title arising out of long adverse possession: and that there is a distinct finding of the Subordinate Judge on this point in favour of the defendant. But on referring to the plaint as well as the written statement of the defendant, we observe that it was to meet the allegation of the plaintiff that he was a trespasser, the defendant asserted that so far from being a trespasser he had been in possession of the land for upwards of twelve years, and could, therefore, plead limitation so as to prevent the plaintiff from ousting him. It was only by way of an argument to resist the right of the plaintiff to evict, that the defendant raised the general plea of limitation, and laid stress on his long continued possession and occupation of the land. His actual title in it he disclosed afterwards in para. 9 of his written statement. There he stated succinctly that the person from whom he purchased the tenure was one Potit Pabun Sircar, who again obtained his title,--namely, a permanent dur-jote potta,--from the superior jote-dar, Khadum Moni Dassi; that Gossain Gunga Dutt Bharuti purchased the rights of Kadhum Moni Dassi to receive rent for this jote, and that, subsequently, the plaintiff acquired the same rights from the Gossain to receive the rent. There is thus here a clear admission of the title of the plaintiff to receive rent from the defendant, and the plea of limitation is set up simply with a view to prove that long continued occupation, not necessarily adverse possession on his part, bars the suit of the plaintiff.

3. Then as to the finding of the Subordinate Judge. No doubt he does speak of dur-jote belonging to both parties, and of the plaintiff not having produced his title-deeds or proved that the lands of the defendant's jote were included in the lands of his, the plaintiff's jote. But it seems to us that this point of title arising from long continued adverse possession is entirely an idea of the Subordinate Judge's own.

4. It is in no way warranted by the pleadings or by the answers given on the examination of the pleaders of the parties which have been read to us. It is clear at any rate that this ground was not taken before the Judge. In summarising the case of the respondent, he says as follows as regards limitation:

As to limitation it applies to all land. Defendant could not appeal against the finding of the lower Court, that he and his predecessor were plaintiff's and his predecessor's tenants, because it is in defendant's favour. But no act of ownership on the part of plaintiff or his predecessor, is proved, so that defendant and his predecessor must be regarded as holding adversely.

5. As before observed, the conclusion of the Judge is, that, inasmuch as the landlord took no rent for more than twelve years, the right which he had to receive the rent is now gone, and an independent title created in the defendant. This is a false conclusion, and is no ground for dismissing the suit. Had this point

stood alone, we should have deemed it necessary to remand the suit to the Judge for retrial; but we find that a remand is really unnecessary, because both Courts recognize the long-continued occupation of the defendant in the capacity which he himself acknowledges, and so the right of action on which the plaintiff bases this suit entirely fails.

6. We think, therefore, that the suit was rightly dismissed, We accordingly affirm the order of dismissal, but we differ from the lower Court in this, that we affirm no adverse title in the defendant, arising out of long-continued non-payment of rent or occupation of the land. The appeal is dismissed with costs.