

(1929) 06 CAL CK 0029
In the Calcutta High Court

Rakhal Das Nepal Pramanik

APPELLANT

Vs

Khirode Bandhu Nandi and Others

RESPONDENT

Date of Decision : 25-06-1929

Acts Referred:

Citation : AIR 1930 Cal 247

Hon'ble Judges : Mitter, J;Graham, J

Bench : Full Bench

Judgement

Mitter, J.—The question raised by this appeal is one of some nicety and is one of special limitation under Article 3 Schedule 3, Ben. Ten. Act.

2. The relevant facts are these : Plaintiff who is a minor is the tenant of the non-transferable occupancy holding which is the subject matter of the present suit. His mother, who is an illiterate pardanashin woman sold the lands to defendant 2. The deed of sale was executed by plaintiff's mother in her personal capacity and has been held by both Courts not to be binding on plaintiff. After the sale, the plaintiff with her mother abandoned the holding in Aghrayan 1328, i.e. in November or December 1921 and thereupon two of the cosharer landlords took khas possession. Hence plaintiff has brought this suit. The suit was instituted admittedly beyond two years of the landlord's taking khas possession. The Court of first instance found in favour of the plaintiff both on the question of title and special limitation. On appeal the lower appellate Court while not disturbing the finding of the Munsiff on the question of title has reversed the decision of the Munsiff on the question of special limitation and has dismissed plaintiff's suit.

3. Against this decision of the Subordinate Judge the present appeal has been brought. It is argued for the appellant that Article 3, Schedule 3, Ben. Ten. Act has no application to the present case as the plaintiff was not dispossessed by the co-sharer landlords but the plaintiff having abandoned possession of the disputed lands the landlords have entered into possession. It is said that plaintiff discontinued possession and thereupon the landlord entered into possession. This, it is said, is not dispossession by the landlord, for dispossession must mean

eviction by the landlord and his entry on such eviction. Here the tenant was already out of possession and no question of eviction arises. Attention is drawn to the distinction made between "discontinuance of possession" and "dispossession" in Article 142 of the Schedule to the Limitation Act. The question we have to consider is whether this view is well founded.

4. Article 3, Schedule 3, Ben. Ten. Act, prescribes that the period of limitation is two years for a suit to recover possession of land claimed by the plaintiff as a raiyat or an underraiyat. The time from which the said period begins to run is two years from the date of dispossession. And although this article does not specify the person by whom the dispossession had been made as this provision is found in the statute which amends and consolidates enactments relating to the law of landlord and tenant-the article can be made applicable only where the dispossession has been effected by the landlord or by his agent see : Haran Chandre v. Madan Mohan AIR 1921 Cal. 249. "Dispossession" implies 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 into possession by another : Panchoo v. Jajneswar [1920] 32 C.L.J. 9 and Brojjendra Kishore v. Bharat Chandra [1915] 22 C.L.J. 283. The facts found in this case amount to discontinuance of possession by the plaintiff and his being followed into possession by some of the cosharer landlords. We think that there was no dispossession such as would attract the operation of Article 3, Schedule 3, Ben. Ten. Act. In this view we think the lower appellate Court was clearly in error in dismissing plaintiff's suit by applying the shorter period of limitation provided for in the Bengal Tenancy Act. As plaintiff's title has been found by both the Courts the decree of the lower appellate Court dismissing plaintiff's suit is set aside and that of the first Court restored with costs in this Court and in the lower appellate Court.

Graham, J.

5. I agree.