

LETTERS PATENT APPEAL.

1913
July 15

Before Jenkins C.J., and Mookerjee J.

ADHAR CHANDRA PAL

v.

DIBAKAR BHUYAN.*

Title—Possession, inference from, as regards title.

Where plaintiff proves that he is in possession for a number of years and has been paying rent to the admitted landlord, the legal inference is that the plaintiff is in possession by virtue of a title derived from the landlord, although the plaintiff may have failed to prove the specific title on which he bases his claim. The plaintiff is entitled in such a case to a decree as against a defendant who has no title to possession.

LETTERS PATENT APPEAL by Adhar Chandra Pal, the plaintiff, from the judgment of Coxe J.

This appeal arose out of a suit for recovery of possession of a certain piece of land, which the plaintiff purchased in 1304 B. S. from defendant No. 2, Tripura Sundari. The land had originally belonged to one Ramprasad Pal and his brothers. It was alleged by the plaintiff that his vendor, Tripura, had purchased the land from the successors-in-interest of the said Pals and had been in possession for considerably over 12 years when she sold it to him in Baisakh, 1304, and that since then he had been in possession on payment of rent to the Raja of Narajole, who was admittedly the proprietor of the land, up to 1314, when he was dispossessed by defendant No. 1. The defendant No. 1, who contested the suit, denied title and possession of the plaintiff, and his vendor, Tripura, the defendant No. 2, and alleged that the

* Letters Patent Appeal No. 124 of 1911, in Appeal from Appellate Decree No. 1812 of 1909.

land was purchased by one Sudhamayee Dasee at a sale held in execution of a decree against the aforesaid Pals and that on the death of Sudhamayee it devolved by inheritance on one Abinash Pal who made a verbal gift of it to his brother-in-law, the defendant No. 1, who since then has been in possession for more than 12 years.

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The Munsif found that Tripura had got no title by her purchase from a person who was not the rightful owner of the land, but that she had acquired a title by holding possession adversely to others on payment of rent for more than 12 years when she sold it to the plaintiff in 1304 and that the plaintiff had since then been in possession on payment of rent to the landlord up to 1314, when he was dispossessed by the defendant No. 1, who failed to make out the title set up by him. The Munsif accordingly gave the plaintiff a decree in full against the defendant No. 1.

On appeal by the defendant No. 1, the Subordinate Judge agreed with the Munsif's finding that Tripura had acquired no title by her alleged purchase, but he differed from him and held that Tripura was never in possession of the disputed land before the sale to the plaintiff and that consequently the plaintiff got no title by his purchase of 1304. The finding of the Munsif that the plaintiff had been in possession from 1304 to 1314 on payment of rent to the landlord was not displaced by the lower Appellate Court. The lower Appellate Court, however, dismissed the suit, holding that as the plaintiff had failed to make out the title set up by him, he could not be allowed to recover in this suit possession, on the strength of his previous possession for less than the statutory period of 12 years.

On appeal by the plaintiff to the High Court, the decree of the lower Court was confirmed by

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Coxe J. The plaintiff, thereupon, preferred again an appeal under cl. 15 of the Letters Patent.

Babu Mohinimohan Chatterjee (with him *Babu Prabodh Chandra Dutt*), for the appellant. The outstanding facts are that the plaintiff had acquired no title by his purchase, but that he had been in possession for almost 11 years on payment of rent to the landlord. I base my title not only on my purchase, but also on possession under the landlord. That gives me title enough against the defendant No. 1 who is a trespasser. I do not rely on a mere naked possession as was done in the case of *Nisa Chand Gaita v. Kanchiram Bagani* (1). My possession is on payment of rent to the person who is admittedly the proprietor of the land, and this circumstance distinguishes the present case from *Nisa Chand's Case* (1). If it were necessary, I would contend that that case was not correctly decided, as it proceeded upon a misapprehension of the observations of their Lordships of the Judicial Committee in *Wise v. Ameerunnissa* (2).

[JENKINS C.J. The view taken in *Nisa Chand's* case (1) is not accepted by other High Courts.]

Yes, nor can it be supported on principles. But to take the line of least resistance, I would confine myself to the ground already urged before the Court, viz., that my title is better than the defendants.

Dr. Dwarkanath Mitter, for the respondent. The finding is that the plaintiff claimed title through Tripura and he has failed to prove that. That being so, the suit should have been dismissed. The specific title which plaintiff set up has been negatived by both the Courts below and he is not entitled to a decree on any other ground. It is

(1) (1899) I. L. R. 26 Calc. 579

(2) (1879) L. R. 7 I. A. 73.

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true in the plaint, the plaintiff states he has been paying rent to Raja of Narajole, the admitted landlord, but his case is that he did so after having got himself substituted in the place of Tripura. He cannot have higher rights than Tripura. Besides, the mere payment of rent cannot be regarded as conclusive on the question of possession. It is merely one of the incidents, and the lower Appellate Court, which is the final Court of fact, may or may not regard it as sufficient to show that plaintiff is entitled to possession. A person in possession is entitled to succeed as against every person other than the rightful owner. And my client was in possession at the date of the suit. Why should his possession be disturbed at the instance of plaintiff, who failed to prove the specific title he set up. Besides, even assuming plaintiff has proved possession, he is not entitled to a decree for possession on the ground of mere anterior possession for a period less than the statutory period of 12 years : see *Nisa Chand Gaita v. Kanchiram Bagani*(1). In this Court, the decisions have been uniform till lately when your Lordship, the Chief Justice, examined the cases and said that the view of the other High Courts, especially the Bombay High Court, was against the view.

JENKINS C.J. This is an appeal under clause 15 of the Letters Patent in a suit brought for recovery of possession of land and for declaration of the plaintiff's right therein. The plaintiff claims to be entitled to possession of the land under the Raja of Narajole. His right was affirmed by the Munsif who passed a decree in his favour. But on appeal, the learned Judge of the lower Appellate Court reversed that decree and dismissed the suit. The judgment now

(1) (1899) I. L. R. 26 Calc. 579.

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under appeal has affirmed the decree of the lower Appellate Court. It is quite true that the plaintiff alleged a title in himself to possession derived from one Tripura and that this title of Tripura's has been negatived by the lower Appellate Court. The plaintiff's right, however, as formulated in the plaint, did not rest on that alone, but there were allegations of possession over a considerable number of years and also of payment of rent to the Raja of Narajole, who admittedly was the proprietor of the land and able to give a right to possession.

The lower Appellate Court has obviously fallen into error on at least one point. But it is unnecessary for us to base our decision on that. It is enough for us to take the facts as they are established, and consider whether on those facts the position is not this that the plaintiff not only was in possession but had a title to possession. Though the lower Appellate Court evidently was not satisfied on the evidence as to Tripura's possession, the plaintiff's possession was held to be proved, nor was there any disturbance of the finding of the Munsif that, as an incident of that possession, rent was paid by the plaintiff to the landlord. It appears, therefore, to us that we must accept those two facts as established in this case, and from those two facts the legal inference flows that the plaintiff in this case was not only in possession but was in possession by virtue of a title derived from the owner of the land which gave the plaintiff a right to possession. It is, therefore, not necessary for us to deal with that conflict of authority between the decisions of this Court on the one hand and those of the other High Courts in India on the other, as to whether possession by itself is a sufficient basis for a possessory suit outside section 9 of the Specific Relief Act. Here we have something more than that

for the plaintiff had a right to possession which entitled him to bring a suit in the ordinary course for the purpose of recovering the possession to which he was entitled and of which he had been deprived. It does not appear necessary to send down the case for further investigation for we have ample materials before us for our decision that the plaintiff has made out his right to have possession restored to him in this suit.

We accordingly set aside the judgment under appeal as also the decree of the lower Appellate Court and restore the decree of the Munsif: and, the plaintiff must get his costs throughout this litigation.

MOOKERJEE J. I agree.

S. M.

Appeal allowed.

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