

APPELLATE CIVIL.

Before Remfry J.

NUTBIHARI DAS

v.

BISHWESHWARI DEBEE.*

1932

July 27,
Aug. 1.

Adverse Possession—Trespasser—Admission of owner's title—Limitation—Indian Limitation Act (IX of 1908), Art 142.

Where a trespasser on land admits, when the owner challenges his possession, that a portion of the land belongs to the owner, but declines to vacate it in spite of demands, then he dispossesses the owner of the whole of the land and his possession is adverse to the owner. In order to eject the trespasser, the owner must bring a suit within 12 years from such dispossession under Article 142 of the Limitation Act.

Ishan Chandra Mitter v. Ramranjan Chakrabutty (1) distinguished.

SECOND APPEAL by the plaintiff.

The facts appear sufficiently from the judgment.

Gopendranath Das for the appellant.

Patitpaban Chatterji and *Pannalal Chatterji* for *Prabhashchandra Sen* for the respondent.

Cur. adv. vult.

REMFRY J. The plaintiff filed a suit to eject the defendant from some huts and from a plot of land, claiming that he was the sole owner of the land, on the ground that the defendant was a trespasser. He had previously filed two suits alleging that the defendant was his tenant, but both were dismissed on the ground that he had failed to prove any tenancy.

In this suit, the plaintiff satisfied the two lower courts that he was the sole owner of the land, but the

*Appeal from Appellate Decree, No. 639 of 1930, against the decree of K. B. Ballabh, Subordinate Judge of Burdwan, dated July 11, 1929, affirming the decree of Nirodeshwar Banerji, Second Munsif of Katwa, dated Dec. 22, 1925.

suit was dismissed on the ground that it had not been filed within 12 years from the time when the plaintiff was dispossessed of the land by the defendant.

It has been found as a fact that the defendant has been in possession of the disputed land for 18 or 19 years.

The only point that was urged in Second Appeal was that the possession of the defendant was not adverse to the plaintiff in respect of a half share in the land, because of her admissions in her written statement.

The defendant in her written statement, paragraph 6, stated that one Satyapada Das had been in possession of a land for over 12 years, and in paragraph 7 stated :

This defendant never denied the title of the plaintiff
on the other hand this defendant has been admitting all along that in the disputed *bāstu*, the plaintiff is 8 annas *mālik* and Satyapada Das is a co-sharer *mālik* of the remaining 8 annas.

The defendant was given possession by this Satyapada Das.

Reliance was placed on the case of *Ishan Chandra Mitter v. Ramranjan Chakrabutty* (1), where it was held that a tenant, who had encroached on his landlord's land for 12 years, acquired a right of tenancy in the land so held. Mookerjee J. held that "the extent of the dispossession depends on the "extent of the claim of right under which possession "by the trespasser is obtained and kept". This he said applied where the landlord allows a tenant to hold an encroachment on the same terms as if it had been part of the holding. He added "the nature and "effect of possession must depend upon the nature "and extent of the rights asserted by the overt conduct "or express declaration of the person relying on it".

This view of the law must be read in its context and relates to a case where a tenant encroaches on his landlord's land and is presumed to do so as a tenant.

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(1) (1905) 2 C. L. J. 125, 135—6.

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Doubtless a limited right in respect of immoveable property can be acquired by user, such as a right of way. But the decision relied on and the decisions therein cited all refer to cases between landlords and tenants or tenure-holders. I can find no case that supports the suggestion that a trespasser pure and simple, who takes exclusive possession of land, without the consent of the owner in any way, acquires no right to the whole of the land simply because he claimed a title to less than the whole. If a trespasser on land admits nothing, the owner must bring his suit within 12 years of dispossession: if the trespasser, when the owner challenges his possession, admits that the land belongs to the owner, but in spite of demands declines to vacate it, that is open dispossession. On principle, it cannot make any difference if the trespasser admits that the person claiming ownership has an undivided share in the lands, if he still insists on possession. It seems to me that if an owner sues 12 years after dispossession from land, he cannot set up admissions made by the trespasser as giving him further time in which he may bring his suit unless those admissions come within section 19 of the Limitation Act. Under Article 142, the suit must be brought within 12 years of dispossession—and it has been found that the plaintiff in this case was dispossessed 18 or 19 years before he filed his suit, nor will the admission of the defendant that she had dispossessed him of all or part of his land, assist the plaintiff.

It is argued that the defendant admitted all along that the plaintiff was entitled to an undivided half share, but in fact she dispossessed him of his share and he had but 12 years in which he could sue to eject her, admission or no admission.

It may be that when a trespasser claims to be a tenant and as such takes possession, he cannot thereafter claim that he possessed as a trespasser, for the claim purported to justify the possession, but when the trespasser asserts that he has no claim

as against the owner to possess the whole of the land, his possession is clearly adverse, and, in my opinion, it does not alter the nature of the dispossession to admit that, in respect of a half share, the title is with the person who claims the land, when the dispossession continues against the will of the owner or part owner. That owner cannot attribute his acquiescence in his dispossession from all or any share in the land to anything but the laches which bars a claim under Article 142, nor is the dispossession any the less adverse, because the trespasser admits that it is adverse. This case comes within the second class of cases mentioned in the case cited where a tenant unequivocally informs the landlord that he is holding an encroachment on the landlord's land adversely to the landlord. There Mookerjee J. said Article 144 of the Limitation Act might apply, but it was never doubted, in any other case, that it would apply and the possession be adverse, and whatever doubt there may be, it does not apply where there is no relationship of landlord and tenant. The defendant claimed that she was entitled to possession under a third party who in fact had no title. She did not admit that she was the tenant of or held under the plaintiff. In such a case, the possession is adverse from the start, and no admission or promise to vacate, which does not result in a license to hold, affects the fact that the possession is adverse or prevents time running against the owner, and, after 12 years, he cannot recover possession. That is what has been found to have happened in this case, and the appeal accordingly fails. The appeal is dismissed with costs.

Appeal dismissed.

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