

[3 Mad. 118.]
APPELLATE CIVIL.

The 21st March, 1881.

PRESENT:

MR. JUSTICE KERNAN AND MR. JUSTICE KINDERSLEY.

Tiruchurna Perumal Nadan and another.....(Defendants) Appellants.
versus
Sanguvien and others.....(Plaintiffs) Respondents.*

Adverse possession—Landlord and Tenant—Non-payment of rent for 12 years—Patta issued to tenant by Government not claiming adversely to landlord—Evidence Act, Sec. 109.

Where the relation of landlord and tenant is proved to have existed, it lies on the defendant in possession of the land to prove that the relation was put [119] an end to at such a period anterior to the suit as would entitle the defendant to rely on his possession as adverse to the plaintiff for 12 years.

Non-payment of rent for upwards of 12 years and a grant of patta by Government to defendant for 5 years do not, when Government claims no interest adverse to plaintiff and plaintiff does not consent to defendant becoming tenant to Government, create any possession in defendant adverse to plaintiff.

Rungo Lall Mundul v. Abdool Guffoor (I.L.R., 4 Cal., 314) approved.

THE facts and arguments in this case appear in the judgment of the Court (KERNAN and KINDERSLEY, JJ.)

The Advocate-General (Hon. P. O'Sullivan) for the Appellants.

Mr. Johnstone for the Respondents.

Judgment:—The question in this case is whether the plaintiffs' right is barred by limitation.

The ancestors of the plaintiffs, along with various other persons, were the Mirasidars of the plaint lands and of other lands, and were the Pungalis or sharers of the swamibogum payable by the Purakudies or cultivators under them, and granted pattas to such cultivators down to the year 1852, and received from the cultivators the Government tirva as well as the swamibogum.

Exhibits J to M are pattas by first plaintiff's father to second defendant's father. N to T are the muchalkas executed by the second defendant and first defendant's father from 1841 to 1852. U to AA are pattas by Government to the Pungalis from 1826 down to 1876, and the registry admittedly stands in the names of them or of some of them.

Defendants alleged that the lands were their own, having been reclaimed from the jungle upwards of 40 years ago, and they refer to pattas, Exhibits S to 12, granted to them in the years 1859 to 1862 and 1864 respectively. No doubt these pattas were so granted under a mistake by the Collector, but Exhibit F, dated 27th February 1865, by the Collector shows that the Revenue Board, on the 23rd of February 1865, ordered the pattas to be in future issued to the Pungalis as usual and not to the Purakudies. Exhibit I is the order of the Board, dated 30th July 1867, on the appeal of first defendant's father against the order of the Board dated the 23rd of February 1865. By

* Second Appeal, No. 389 of 1880, against the decree of J. F. Snaith, Acting District Judge of Tinnevely, dated 26th September, 1879, confirming the decree of the District Munsif of Ambasamudram, dated 29th June 1878.

the order I, the report of the Collector, on which the order of the 23rd of February 1865 is founded, is confirmed. Since that time as well [120] as previous thereto the Pungalis are the owners recognized by Government.

In 1875 the Pungalis, under the sanction of the Collector, partitioned their interests in the lands, and the plaint lands and trees in the occupation of the defendants were allotted to the plaintiffs.

The defendants for upwards of 12 years have not paid any rent, either Government rent or swambogum, to *the plaintiffs*. Plaintiffs gave them notice to quit upwards of 6 months before the commencement of this suit.

The District Judge, referring to the clear proof of the relation of landlord and tenant having existed between the plaintiffs and those from whom they claim on the one hand and the defendants and those from whom they claim on the other hand to 1852, and to Section 109 of the *Evidence Act*, and to the decision of the *Calcutta* High Court, I.L.R., Vol. 4, page 314, has held that the mere non-payment of rent to plaintiffs for upwards of 12 years by the defendants, the tenants, does not create a bar to the right of the plaintiffs as landlords. We agree in his decision. It lay on the defendants in possession of the land to prove that the relation of landlord and tenant was put an end to at such a period anterior to the suit as would entitle the defendant to rely on his possession as adverse to plaintiff for 12 years.

The fact that pattas were granted from 1859 to 1864 to the defendants, or those through whom they claim, did not, under the circumstances, create any possession either in defendants or in the Government adverse to the Pungalis. The Pungalis no doubt did not consent to such pattas being issued, but there was no surrender by them of their interest to Government, nor did the Government claim any interest adverse to the Pungalis, nor did the Pungalis, consent to the defendants becoming tenants to the Government. The Government do not now claim to be the immediate landlords of the defendants. The fact that the rights of the Pungalis appeared to be, or were likely to be, interfered with by the pattas being granted to the occupiers (called Purakudies in F and in the Proceedings of the Collector reporting against the grant of pattas to them) was brought before the Board of Revenue, and they ordered that the pattas should be issued to the Pungalis. On appeal by the occupier, that order [121] was confirmed. The pattas granted from 1859 to 1864 recognize the right of the Mirasidars (*i.e.*, the persons entitled to the mirasi right, *viz.*, the Pungalis). The pattas direct the persons to whom each patta is granted to pay the "beriz" to the *Mirasidar* and get his receipts. It is said that the *Mirasidar* is only an officer of Government authorized to receive the rent from the tenants and having no interest in the land or rent. But this is not established in any way. No doubt the *Mirasidar* was the proper person to receive the rent from the occupier. But that was because he was, and is, the recognized owner under Government of the land and bound to pay the rent to Government.

We think the appeal should be dismissed with costs and this will govern the other cases.

NOTE.—See 2 M.H.C.R., 392 ; 2 N.W.P., 16 ; I.L.R., 4 Cal., 661.

NOTES.

[ADVERSE POSSESSION—LANDLORD AND TENANT—

Mere non-payment of rent, or non-performance of services in the case of service tenure does not make the holding adverse to the landlord. There must be disclaimer or refusal to perform service:—(1881) 3 Mad. 118 ; (1899) 23 Bom. 602 respectively. See also 11 C. W. N. 655.]