

not make it worth his while to do so ; and he, therefore, must be excluded. There are only the two claimants therefor ; the District Judge will endeavour to make a fair division of the sum between them ; and before doing so, he will do wisely to make the parties come to some arrangement as to the abatement or otherwise of the darpatnidar's rent.

The appellant having substantially succeeded, will be entitled to the costs of this appeal ; and the costs in the Court below will abide the result.

Case remanded.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

MOHABEER PERSHAD SINGH (DEFENDANT) v. MOHABEER SINGH
(PLAINTIFF).*

1881
May 31.

*Recovery of Possession—Dispossession—Ejectment—Evidence—Onus—
Proof of Title.*

In June 1878, the plaintiff sued the defendant for the recovery of possession of certain land. At the trial it was proved, that he had been continuously in peaceable possession of the land until the month of May 1878, when he was forcibly and illegally dispossessed by the defendant.

Held, that the evidence was sufficient to call upon the defendant to show his title to the land.

THIS was a suit, instituted on the 28th of June 1878, for the recovery of possession of land, from which the plaintiff had been dispossessed by the defendant. The plaint stated, that the land of the plaintiff adjoined that of the defendant on the south and east ; that, on the 26th of May 1878, the defendant moved the southern boundary-mark, and on the 29th of May 1878 he moved the eastern boundary-mark, the combined effect of which was, that the defendant took possession of 10 biswas of land, which, up to that time, had been in possession of the plaintiff, and held by him as moafi land under a sanad, dated the

* Appeal from Appellate Decree, No. 712 of 1880, against the decree of Baboo Kally Prosonno Mookerjee, Second Subordinate Judge of Sarun, dated the 30th January 1880, affirming the decree of Baboo Tara Prosonno Bajerjee, Sudder Munsif of Chupra, dated the 15th February 1879.

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28th July 1810, from the then owner of the land. The defendant alleged that the plaintiff had never been in possession of the land claimed; that the sanad relied on was a forgery; and that the suit was barred by limitation.

At the trial, the plaintiff put in evidence two registered documents relating to the defendant's land, and which were admittedly executed by the defendant—one in 1871, and the other in 1877. These documents convinced the Court of first instance and the lower Appellate Court that the defendant had therein described the land in dispute as the plaintiff's agricultural land.

The Court of first instance found that the plaintiff had been continuously in possession of the land in dispute until his dispossession by the defendant in May 1878; that the title under the sanad was proved; and that the dispossession took place as alleged. The lower Appellate Court found that the sanad was not proved; that "the witnesses examined by the plaintiff, and whom the lower Court believed, and for disbelieving whom no valid reason has been shown," proved that the land in question was in the plaintiff's possession; that he was dispossessed by the defendant in May 1878; and that the documents of 1871 and 1877 showed that the defendant had then considered the land in dispute as belonging to the plaintiff. In this state of matters, the Judge considered that the plaintiff's failure to prove his title under the sanad was immaterial; and that the plaintiff's previous peaceable possession entitled him to a decree for possession as against the defendant, who was "no better than a trespasser." The Judge went on to say:—The facts disclosed in this case are, that the plaintiff was in possession of the disputed land, and dispossessed therefrom by the defendant. Under such circumstances, the *onus* of proving title is shifted upon the latter, and unless he could prove a better title to the land, the plaintiff would be entitled to possession. This view is consonant with the principle laid down in *Jadubnath v. Ram Soondur Surmah* (1), *Khajuh Enaetoollah Chowdhry v. Kishen Soondur Surmah* (2), *Radha Bullub Gossain v. Kishen Gobind Gossain* (3), *Dubjee Sahoo*

(1) 7 W. R., 174.

(2) 8 W. R., 386.

(3) 9 W. R., 71.

v. *Shaikh Tameezooddeen* (1), *Ayesha Bibee v. Kanhye Molah* (2), *Sham Soonduree Debia v. The Collector of Maldah* (3), *Trilochun Ghose v. Koylunath Bhuttacharjee* (4), *Gour Paroy v. Wooma Soonduree Debia* (5), *Nagore Monee Debia v. Smith* (6), and *Daitari Mohanti v. Jugo Bundhoo Mohanti* (7).

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The defendant appealed to the High Court.

Mr. *Sandel* for the appellant.

Baboo *Chunder Madhub Ghose* and Baboo *Nil Madhub Sein* for the respondent.

The judgments of the Court (GARTH, C.J., and McDONELL, J.J.) were as follows:—

GARTH, C. J.—I think that, in a case of this kind, where the plaintiff is dispossessed by a person who is found to have no title, and to be a trespasser, it is sufficient for the plaintiff to prove that he was in quiet possession at the time when he was so dispossessed. It seems to me, that this ought to be sufficient to establish a *prima facie* case as against the defendant. I am aware that there is some difference of opinion in the Court upon this point; and that some learned Judges consider, that the remedy by a possessory action, which is now provided by s. 9 of the Specific Relief Act, and which was formerly given by the Limitation Act, has the effect of doing away with the English rule, that possession is *prima facie* evidence of title. I do not see why that should be. The rule seems to me a very wise and convenient one, and I should be sorry to see it abolished. I think, therefore, that the Court below is right, and that the appeal should be dismissed with costs.

McDONELL, J.—I concur in dismissing the appeal. I think that, apart from the reasons given by the learned Chief Justice for dismissing the appeal, the Subordinate Judge has shown by his judgment that he agrees with the Munsif in holding that the plaintiff has acquired a statutory title.

Appeal dismissed.

(1) 10 W. R., 102.

(2) 12 W. R., 146.

(3) *Ibid*, 164.

(4) 12 W. R., 175.

(5) *Ibid*, 472.

(6) 23 W. R., 291.

(7) *Ibid*, 293.