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of the parties, and we presume that the Collector will give the requisite effect to any declaration so made.

The case will be remanded to the District Judge for disposal, and costs of this appeal will abide the result.

Appeal allowed and case remanded.

Before Mr. Justice Pontifex and Mr. Justice Field.

1881
May 26.

NILMADHUB SHAHA AND OTHERS (DEFENDANTS) *v.* SRINIBASH KURMOKAR (PLAINTIFF).*

Suit for Possession—Limitation—Beng. Act VIII of 1869, *s.* 27.

In a suit for possession of land, it appeared that the defendants had obtained a darpatni lease of the land in question in 1271 (1865), and that they had immediately dispossessed the plaintiff, and had never acknowledged him to be their tenant. The plaintiff instituted his suit within twelve years from the date of dispossession.

Held, that the suit was not barred by limitation under s. 27 of Beng. Act VIII of 1869.

That section only applies to cases where the relation of landlord and tenant exists, and cannot be pleaded in bar by a defendant who does not admit that such relation has existed.

THIS was a suit to have the plaintiff's purchased right declared in respect of an eight-anna share of certain land, and to recover khas possession, together with mesne profits. It appeared that the land had originally belonged to the plaintiff and the defendant No. 3, one Uma Sunduri Dasi, the widow of one Kesub Chunder Kurmokar, and that they were in joint possession. The plaintiff was dispossessed in the year 1272 (1865). He then brought a rent-suit in respect of his share, and obtained a decree. In 1284 (1877), the plaintiff purchased the share of Uma Sunduri Dasi, but was not allowed by the other defendants to take possession; whereupon he instituted the present

* Appeal from Appellate Decree, No. 373 of 1880, against the decree of Baboo Krishna Chunder Chatterjee, Officiating Subordinate Judge of Nuddea, dated the 27th December 1879, modifying the decree of Baboo Kristo Behari Mookerjee, First Munsif of Kooshtea, dated the 29th of June 1878.

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suit. The defendants contended that, in 1271, and immediately prior to the dispossession of the plaintiff, they had obtained a darpatni of the land in question, when they at once dispossessed the plaintiff, and that the suit was barred by limitation under s. 27 of Beng. Act VIII of 1869. Both the lower Courts gave the plaintiff a decree. The defendants appealed to the High Court.

Baboo *Nil Madhub Bose* for the appellants.

Baboo *Shoshi Bhoosun Dutt* for the respondent.

The judgments of the Court (PONTIFEX and FIELD, JJ.) were as follows:—

PONTIFEX, J.—It is admitted in this case, on the findings of the lower Courts, that the plaintiff is entitled to recover, unless he is barred by s. 27 of Beng. Act VIII of 1869 from suing. That section gave him a limitation of one year, and the plaintiff instituted the suit after the expiration of eleven years from the date of the alleged dispossession. Now, taking the words of that section by themselves, and putting, what I think is, a reasonable construction upon them, it seems to me they do not apply to this case, and the defendants are not entitled to insist upon them. The facts of the case are, that the defendants claim that immediately prior to the dispossession of the plaintiff, a darpatni was created in their favour, and upon its creation they at once proceeded to dispossess the plaintiff from his holding. Now the words of the section are: "All suits to recover the occupancy or possession of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same," should be commenced within one year. It seems to me that the course of action pursued by the defendants in turning out the plaintiff from his occupation immediately their darpatni was created, showed that at that time they did not then admit that he was a tenant. As he was immediately dispossessed after their title accrued, it is clear that they could neither have received rent from him, nor could he have paid rent to them; and as they did not admit that at that time he was their tenant, I do not think it

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lies in their mouth now to insist that he was a tenant within the terms of s. 27; and not being a tenant, the limitation of one year would not apply to the case. There seems to be a question whether these suits under s. 27 are not merely possessory suits. As to that I am not at present prepared to give any opinion. The appeal must be dismissed with costs.

FIELD, J.—I also think that in this case the defendants cannot be permitted to approbate and reprobate. It appears that, after the grant to them of the patni, they ousted the plaintiff without giving him an opportunity of attorning to them and becoming their tenant, and they cannot now be permitted to say that there was a tenancy existing between him and the defendants, for the purpose of obtaining the benefit of the one year's rule of limitation. But it appears to me also, that the one year's rule of limitation provided by s. 27 of Beng. Act VIII of 1869 was not intended to apply to a case of this kind. The particular words in that section, upon which the defendants rely in this case, are: "All suits to recover the occupancy of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to recover rent for the same." In order to understand the meaning of these words, we may examine the history of their use in acts of the Legislature, which are *in pari materia*. That history is as follows: Section 23 of Act X of 1859 contained a specification of the different kinds of suits which could be brought under the provisions of that Act, and over which the Revenue Courts were given jurisdiction. Clause 6 of that section specifies the following suits, *viz.*, "all suits to recover the occupancy or possession of any land, farm or tenure, from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same." Now, it was decided in the Full Bench case of *Gooroo Doss Roy* v. *Ram Narain Mitter* (1), that these words refer only to possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title, and seeks to have his right declared and possession given him in pursuance of that title. "Full meaning," said Peacock, C. J.,

(1) B. L. R., F. B. Rul., 628; S. C., 7 W. R., Civ. Rul., 187.

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who delivered the judgment of the Full Bench, "may, and we think must, be given to the words 'illegally ejected' without treating them as giving a wider sense to the words abovementioned." He then proceeds to give instances of such "illegal ejectment," as for example, when a zemindar ejects a ryot forcibly and without having recourse to the Court; and he concludes thus: "Looking to the whole Act, it appears to us that cl. 6 of s. 23 does not take from the Civil Court the power to try the question of title as between a ryot, farmer, or tenant, and the person to whom he pays rent. It follows, therefore, that in this action, which is brought, setting out a title by the plaintiff, and asking, 'under the above facts,' to be declared entitled, on the strength of his documents, to recover possession of the lands, he will be entitled, if he makes out his case, to a decree that he be put into possession of the land with mesne profits." See also the following cases decided before the Full Bench decision:—*Bishumbhur Boil* v. *Okoor Pandey* (1), *Banee Madhub Banerjee* v. *Joy Kishen Mooherjee* (2), *Lalla Gokool Pershad* v. *Raja Rajendar Kishore Singh* (3); and the following cases decided after the Full Bench case,—*Lalljee Sahoo* v. *Bhugwan Doss* (4) and *Dhonaye Mundul* v. *Arif Mundul* (5). In the Full Bench case—*Chunder Coomar Mundul* v. *Nunnee Khanum* (6)—it was held, that the decision of a Revenue Court, in a case under cl. 6, s. 23 of Act X of 1859, as to the genuineness of a mourosi patta, is not *res judicata* so as to estop a Civil Court from trying the validity of the patta in a subsequent suit in such Court between the same parties or parties under whom they claim. In this case one Baker Ali had sued under cl. 6 of s. 23 to recover possession of land from which he alleged that he had been illegally ousted, and which was included in a certain mourosi patta. The defendants alleged that the mourosi patta was spurious. Baker Ali succeeded, whereupon the defendant brought a suit in the Civil Court to have the patta declared to be a spurious document and to recover possession of the land. Jackson, J., doubted if suits

(1) 4 W. R., Civ. Rul., 105.
(2) 4 W. R., Act X Rul., 16.
(3) W. R., 1864, Act X Rul., 4.
(4) 8 W. R., Civ. Rul., 337.
(5) 9 W. R., Civ. Rul., 306.
(6) 11 B. L. R., 434.

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under cl. 6, s. 23 of Act X of 1859, were of the nature of possessory suits; but the other Judges who composed the Full Bench were agreed that the decision of the Revenue Court, except so far as it established the right of Baker Ali to the possession of the land when he was ejected, was a finding upon a collateral matter, and had not the effect of *res judicata* in the civil case.

I think the result of these cases is, that a case under cl. 6, s. 23 of Act X of 1859, was very similar in its nature to a case under the old section (15) of Act XIV of 1859, now s. 9 of the Specific Relief Act, I of 1877; and this being so, suits under cl. 6 to recover the occupancy or possession of land from which a ryot has been illegally ejected by the person entitled to receive rent for the same, differ materially from suits like those referred to in the Full Bench case of *Gooroo Doss Roy* v. *Ram Narain Mitter* (1)—suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in pursuance of that title. To this latter class the twelve years' rule of limitation is applicable. In the Full Bench case, the suit was instituted by persons who had been ten years out of possession. While to the former class is applicable the one year's rule of limitation provided by s. 30 of Act X of 1859, which speaks of "all suits instituted under this Act," any specification being necessary, as such suits had been specified in s. 23. When Beng. Act VIII of 1869 was enacted, the specification of suits contained in s. 23 of Act X of 1859 became no longer necessary. And Act VIII enacted in general terms that all suits brought for any cause of action arising under Act X of 1859 were to be cognizable by the Civil Court according to their several jurisdictions (see s. 33). The object of the Legislature in passing Beng. Act VIII of 1869 was to transfer the trial of rent cases from the Revenue to the Civil Courts, and there was no intention to interfere with the special law of limitation provided for rent cases by Act X of 1859. In consequence, however, of the omission of the specification of suits in the Act of 1869, it became necessary, instead of the general words "all suits instituted under this Act" in s. 30 of Act X of 1859, to insert in the limitation section (27) of Beng.

(1) B. L. R., F. B. Rul., 628; S. C., 7 W. R., Civ. Rul., 147.

Act VIII of 1869, a specification of the class of suits to which these special limitation provisions were applicable. Accordingly we find the words of cl. 6, s. 23 of Act X of 1859, "all suits to recover the occupancy [or possession] of any land, farm, or tenure from which a ryot, farmer, or tenant has been illegally ejected by the person entitled to receive rent for the same," used with the omission of the two words in brackets, in s. 27 of the Act of 1869. It appears to me reasonable to suppose that it was intended by the use of these words to make the one year's limitation provided by the Act of 1869 applicable to the same class of suits only to which cl. 6 of s. 23 of Act X of 1859 had been decided to be applicable, and to which the one year's rule of limitation was applicable under the same Act of 1859. I find that the same view has been taken by a former learned Judge of this Court (Phear, J.) in the case of *Nistarini* v. *Kali Pershad Dass Chowdhry* (1).

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

IN THE MATTER OF POONA CHURN PAL.

1881
August 1.

Sanction to Prosecute—Presidency Magistrates' Act (IV of 1877), ss. 41, 42, 43, and 168—General and Specific Sanction—Order of Discharge—Superintendence of High Court—Charter Act (24 & 25 Vict., c. 104), s. 15.

The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate, is that laid down in s. 168 of Act IV of 1877, and as by that section there is no appeal allowed to a complainant, who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal.

ON the 2nd May 1881, Poona Churn Pal obtained liberty, under the provisions of ss. 41 and 42 of Act IV of 1877,

* Criminal Rule, No. 190 of 1881, against an order of F. J. Marsden, Esq., Presidency Magistrate of Calcutta, dated the 9th July 1881.

(1) 23 W. R., 431.