

pastured the cattle or permitted them to trespass in the reserved forest. In the present case all that the prosecution proved was that defendant's cattle were found in a reserve. Such cattle may be impounded, but the owner cannot be held liable unless some overt act of his be proved. We set aside the conviction and sentence and direct that fine be repaid.

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EMPERESS
v.
KRISHN-
NAYAN.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

SUBBAKKA (DEFENDANT), APPELLANT,

v.

MARUPPAKKALA AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1891.
October 29.

Limitation Act—Act XV of 1877, sched. II, arts. 49, 116—Suit to recover title-deeds left with a mortgagee after redemption—Demand and refusal.

After the redemption of a mortgage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor. The mortgagor now sued to recover possession of them:

Held, that Limitation Act, sched. II, art. 49, was applicable to the case, and that time began to run from the date of the mortgagee's refusal.

CASE referred for the orders of the High Court under Civil Procedure Code, s. 617, by W. J. Tate, District Judge of South Canara.

The case was stated as follows:—

“The suit was brought for the possession of certain title-deeds. Two mortgages, one for Rs. 3,300 and one for Rs. 1,200, were executed by relations to the defendant's mother. Defendant sued one Ganapa (the surviving descendant of the mortgagors, and a minor), thereon in original suit No. 14 of 1883 on the file of the Subordinate Court. With Ganapa (first defendant) was joined his mother Gauramma (defendant No. 2) and another. Defendant obtained a decree for the whole mortgage money, and a direction that the mortgaged (hypothecated) property be sold after two months. In order to raise the money and so save

* Referred Case No. 20 of 1891.

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“the property, Gauramma and Ganapa’s other guardian, Laksh-
 “mamma, executed two usufructuary mortgages to plaintiffs for
 “Rs. 3,300 and Rs. 4,500 respectively, on the same two separate
 “properties. The plaintiffs accordingly redeemed the properties
 “by paying the mortgage money into Court; and the same was
 “received by defendant.

“Defendant did not, however, deliver to plaintiffs the title-
 “deeds, *i.e.*, the original deeds of mortgage and the connected
 “documents, and more than three years after she received the
 “mortgage amount, the plaintiffs bring this suit to enforce deli-
 “very of the same.

“The defendant contended, first, that the suit was barred
 “under article 49 of the second schedule of the Limitation Act.
 “And the first question I have the honor to refer to the High
 “Court is, whether that article applies to a suit like the present,
 “which is one for the recovery of title-deeds; in other words,
 “whether the title-deeds of immovable property fall under the
 “head of specific movable property? Under the former Limita-
 “tion Act (IX of 1871) there was a special article (No. 33)
 “relating to such property, and Mitra, in his ‘Law of Limitation
 “and Prescription,’ second edition, thinks that a suit for title-
 “deeds *is* governed by the article in question (No. 49 of the
 “present Act) in the absence of a repetition in schedule II of an
 “article corresponding to article 33 of Act IX of 1871; so in
 “the note to Whitley Stokes’ ‘Anglo-Indian Codes’ under article
 “49. But the two reported cases—*Jagjivan Jucherdas v. Gulam*
 “*Jilani Chaudhri*(1) and *Rameshar Chaubey v. Mata Bhikh*(2)—
 “referred to by the latter author do not seem to be in point, as
 “they refer only to suits for money.

“My own opinion on the point is that the article applies,
 “inasmuch as title-deeds do not, at any rate in India, fall under
 “the definition of immovable property in the General Clauses
 “Act, s. 2, and are therefore by the same statute ‘movable
 “property.’

“The next question is, whether the period of limitation
 “under this article, supposing it to apply, runs from the date
 “when defendant *received* the mortgage money (1st April 1886—
 “*vide* exhibits A, B and C), or, as the Munsif thought, from the

(1) I.L.R., 8 Bom., 17.

(2) I.L.R., 5 All., 341.

“ date of receipt by defendant of plaintiff’s letter of notice
 “ (exhibit D shows that this was in July 1888)? In the former
 “ case the suit is barred, in the latter not barred. SUBBANKA
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“ The point seems doubtful, but on the analogy of article 33
 “ of the former Limitation Act, and relying on the definition of
 “ the mortgagor’s rights in section 60 (*vide* right ‘a’) of the
 “ Transfer of Property Act, I am inclined to think that the period
 “ of limitation runs from the former date, *i.e.*, from 1st April
 “ 1886, when the mortgage money was received by defendant,
 “ her detention of the title-deeds being thereafter wrongful.

“ The third question, which was raised only in appeal is
 “ whether, inasmuch as the mortgage deeds (both the original ones
 “ to defendant’s mother and also those to the plaintiffs) reveal a
 “ privity of contract between the parties that the title-deeds
 “ should be surrendered on receipt of the money—a contract which
 “ is in writing registered—the true article to apply is not article
 “ 116 on the principle of giving the longest available time, when
 “ either of two limitation periods apply to the person whose right
 “ is sought to be barred?

“ I have great doubts in this point, but am, on the whole, of
 “ opinion that article 116 does not apply, inasmuch as it governs
 “ only a suit for ‘compensation’ for breach of contract, and not
 “ a suit for movable property; but it is not at all certain that
 “ the present suit cannot be held to fall under the definition ‘suit
 “ for compensation’ owing to the request in the plaint for Rs. 200
 “ damages in case the title-deeds are not produced and delivered
 “ to the plaintiffs.

“ Appellant (defendant) further contends that the suit is bad for
 “ misjoinder, inasmuch as separate suits should have been brought
 “ with reference to each of the two plaint mortgages. My own
 “ opinion is that the suits may, legally and not improperly, be
 “ joined with reference to sections 42 and 45, Code of Civil Proce-
 “ dure; but, as I am raising the other points in the case and have
 “ some doubt in the matter, I would ask the High Court to decide
 “ whether the present suit is bad owing to the joinder in it of the
 “ title-deeds relating to two separate mortgages, such mortgages
 “ being separately redeemable under section 61 of the Transfer of
 “ Property Act.

“ Lastly, defendant says she is willing to waive other objec-
 “ tions and to surrender the title-deeds to plaintiffs provided she

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“ be secured by them against any possible suits brought by Ganapa
“ on attaining his majority. She further says that Ganapa’s
“ present guardians have not authorised her to deliver to plaintiffs
“ the title-deeds. Is she bound to do so without such security?
“ The request for security seems certainly equitable, but rests on
“ no provision of law. The equity of redemption having been
“ transferred to the plaintiffs, they must, *qua* the defendant, be, I
“ think, regarded as owners. If so, she is bound to deliver the
“ deeds to them unconditionally. She is also, in my opinion,
“ estopped by her acceptance of the plaintiff’s tender. She might,
“ perhaps, have refused to accept this in the absence of authoriza-
“ tion from the guardians, but, having done so, her lien on the
“ title-deeds would cease.

“ There are, however, doubts in the matter, and I therefore
“ refer also to the High Court the question ‘ whether defendant
“ is bound to surrender the plaint title-deeds without furnishing
“ security?’ ”

Sankaran Nayur for appellant.

Narayana Rau for respondents.

JUDGMENT.—We are of opinion that article 49 applies. The original possession of the title-deeds by defendant was lawful and the time runs from the date of the detainer’s possession becoming unlawful. The mere retention of the deeds in defendant’s possession after payment of the decree amount was not unlawful, though plaintiffs had a legal right to demand delivery, but his retention of them after a lawful demand for delivery was made was an illegal detention.

The time will, therefore, run from the date of demand (July 1885) and the suit is not barred.

The Judge does not state he entertains any doubt on the question of misjoinder, and we see no reason to consider it under the provisions of section 617, Civil Procedure Code. In answer to the last question, the point for decision is whether plaintiffs are entitled to the deeds. If they are, and if the defendant is not entitled to detain them, there can be no question of security.
