Upon all these considerations we are of opinion that the decree of the lower Court should be set aside, and that of the first Court restored, with costs.

Appeal allowed.

Before Mr. Justice McDonell and Mr. Justice Macpherson.

1885
April 29.

LAL MAHOMED (DEFENDANT) *v.* KALLANUS (PLAINTIFF).*

Evidence—Estoppel of tenant—Act I of 1872, *s.* 116—*Derivative title.*

A, a ryot, being in possession of a certain holding, executed a *kabuliat* regarding this holding in favor of *B*, (who claimed the land, in which the holding was included, under a derivative title from the last owner), and paid rent to *B* thereunder.

Held, that *A* was not estopped by s. 116 of the Evidence Act from disputing *B*'s title.

The words "at the beginning of the tenancy" in s. 116 of Act I of 1872 only apply to cases in which tenants are put into possession of the tenancy by the person to whom they have attorned, and not to cases in which the tenants have previously been in possession.

THIS was a suit for arrears of rent.

The plaintiff alleged that he had obtained an *ijara pottah* for ten years, from Kartick 1287, of an eight-anna share in a certain mouzah from Mahomed Ismail, Mahomed Eayashin, Shamshenessar Bibi, Azizanessa Bibi and Shaban Bibi. That one Sheikh Lal Mahomed had, subsequently to the execution of the *ijara pottah*, executed in Baishakh 1288 a *kabuliat* for three years on account of a certain *jote* in this mouzah, which *jote* had formerly been held by Sheikh Lal Mahomed under Mahomed Ismail, and that the rent of this *jote* being in arrears, he brought this suit for the purpose above mentioned.

The defendant denied that the persons under whom the plaintiff claimed had had any right in the mouzah, and stated that he had never paid rent to any of them. He further stated that one Ekram Hossain was originally the owner of an eleven-anna share in this mouzah, and that he had paid rent to him for the land for

* Appeal from Appellate Decree No. 2222 of 1883, against the decree of Baboo Parbati Coomar Mitter, First Subordinate Judge of Mymensingh, dated the 18th July 1883, reversing the decree of Baboo Hari Nath Rai, Munsiff of Bazitpore, dated the 14th of February 1883.

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which rent was now claimed, and that after Ekram's death he had paid rent to Soorja Mia and other heirs of Ekram Hossain; that Mahomed Ismail, and certain others of the heirs of Ekram Hossain had been deprived of their share in the estate by a deed of *mimangsapatra*, and, although they had since attempted to get possession, they have failed to do so. He further stated that he had executed the *kabuliat* under coercion.

The only issue framed was whether or no the *kabuliat* had been executed under coercion.

The evidence showed that the defendant had formerly paid rent to Ekram Hossain, and after his death to Soorja Mia and other heirs of Ekram Hossain, but that since the execution of the *kabuliat* it was admitted that he had paid rent to the plaintiff; that in 1287 the plaintiff had built his sudder cutcherry on the premises in dispute, and had forcibly compelled the defendant and others to come and execute *kabuliats*. The plaintiff gave certain evidence denying that coercion had been used.

The Munsiff considered that no issue regarding title to the land ought to be raised, s. 116 of the Evidence Act precluding the defendant from disputing the plaintiff's title, the defendant having admitted the execution of the *kabuliat* and the subsequent payment of rent under it, and that the only question to be decided was whether or no the *kabuliat* had been obtained by coercion; and as to this he held, that, taking into consideration the terms which were imported into the *kabuliat*, and the evidence given by the defendant as to the means employed in getting the *kabuliat*, and the unreliable evidence given by the plaintiff in contradiction, coercion had been proved, and he, therefore, dismissed the plaintiff's suit.

The plaintiff appealed to the Subordinate Judge, who held that the defendant having admitted execution of the *kabuliat*, the onus was upon him to prove that coercion was used; that there was no reliable evidence to show that the *kabuliat* was obtained by coercion; and that supposing even that there had been, this fact would not make the *kabuliat* void, as the defendant had ratified the contract by paying rent to the plaintiff, and after further stating that there appeared to be a dispute as to the title to the land between the plaintiff and one Soorja Mia, to whose

side the defendant had been gained over, he decided that, as the defendant had attorned to the plaintiff, he was liable to pay the rent sued for until such time as it might be established that Soorja Mia had a better title than the plaintiff. He therefore allowed the appeal.

The defendant appealed to the High Court.

Mr. *Phillips* (with him Baboo *Grish Chunder Chowdhry*) for the appellant. The question of previous payments of rent to the plaintiff was not raised in any issue, and the lower Court ought not to have decided on this point without receiving rebutting evidence from the defendant; the Courts below were wrong in not allowing the defendant to prove the title of the persons set up by him, notwithstanding the execution of the *kabuliat* in favor of the plaintiff who claimed under a derivative title; *Lodai Mollah* v. *Kally Dass Roy* (1); I am not estopped from setting up a derivative title.

Baboo *Mohiny Mohun Doss* (with him Baboo *Rash Behari Ghose*) for the respondent. The case of *Protap Chunder Roy Chowdhry* v. *Jogendro Chunder Ghose* (2) shows that such questions of title cannot be raised in rent suits. When a person has been in possession of land by receiving rents or by any acknowledgment of his position as a landlord, such person would, apart from any question of his title to the property, have a right to claim rent from his ryot. See *Bhyro Singh* v. *Rajah Leelanund Singh Bahadoor* (3). The defendant is estopped from disputing our title, see s. 116 of the Evidence Act; and the classification of estoppels there given is not exhaustive. The other side would confine estoppel as between the tenant and the person who has let him into possession, but I say the doctrine is much wider.

Mr. *Phillips* in reply.—I concede we admitted that we paid rent to the plaintiff after the *kabuliat*, but I say the admission does not amount to an estoppel; the case of *Bhyro Singh* v. *Rajah Leelanund Singh Bahadoor* does not apply, as it is no authority

(1) I. L. R., 8 Calc., 238. (2) 4 C. L. R., 168.
(3) 21 W. R., 153.

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on the construction of the Evidence Act, the case being decided in the Court of first instance before the Evidence Act came into force. With regard to the question whether there are rules of estoppel outside the Evidence Act, see *Ganges Manufacturing Co.* v. *Soorujmull* (1), which shows that where the estoppel is pleaded as estopping a person from giving particular evidence, the only rules of estoppel are those laid down in the Evidence Act, but that all rules of estoppel were not of course rules of evidence.

Here, however, we have a particular section, *viz.*, s. 116, which applies to such an estoppel as arises in the present case; for the only question here is whether my client is entitled to give evidence on a certain point. It is clear that a derivative title may be disputed; the words "the beginning of his tenancy" in s. 116 mean the beginning of the tenant's tenancy and not the introduction of a new landlord.

The case of *Cornish* v. *Searell* (2) was the case of a person without any title coming forward and getting a tenant to execute a lease, and the whole of the argument there turns on his being in possession and not on his being let into possession; that case is on all fours with the present. *Hall* v. *Butler* (3) favours my contention, that the beginning of the tenancy means the creation of the tenancy originally. There is no question here of attornment, it is one of agreement. The case of *Protap Chunder Roy Choivdhry* v. *Jogendro Chunder Ghose* (4) should be considered in two portions: (1) as concerning the right of an intervenor setting up his title; and (2) whether the original defendant had a good defence to the suit. In deciding the case the second matter, the intervenor, was put out of the question, and therefore the question of title went out with him; and it seems to me that the case merely decides that a defendant will not be allowed on appeal to shift his case, and that when this is done the Courts will not interfere. But here we seek to raise the question of title ourselves, there is no intervenor in this case. There seems no estoppel against disputing a derivative title; admitting derivation of title, one may set up the fact that

(1) I. L. R. 5 Calc., 669.
(2) 8 B. & C., 471.
(3) 4 C. L. R., 168.
(4) 10 A. & E., 204.

your original landlord's title is forfeited, and set up another, and in such a case the estoppel would be to the plaintiff.

Judgment of the Court (McDONELL and MACPHERSON, JJ.) was as follows:—

This suit was brought to recover arrears of rent based on a *kabuliat*. The defendant admitted having given the *kabuliat*, but stated that he had done so under coercion. He also raised the further defence that at the time when the *kabuliat* was executed the plaintiff had no title to the share claimed by him. The Munsiff was of opinion that under s. 116 of the Evidence Act the defendant could not, if the *kabuliat* stood, deny the plaintiff's title. So he confined himself to the simple issue as to whether the *kabuliat* was obtained by coercion or not, and finding, for the reasons given in his judgment, that it was so obtained, he dismissed the plaintiff's suit. The Subordinate Judge on appeal held that the evidence to prove coercion was not reliable, and that the defendant could not avoid the contract, as he had ratified it by paying rent. He therefore reversed the Munsiff's judgment and decreed the plaintiff's suit.

In second appeal it was urged before us that by giving the *kabuliat* the defendant was not estopped from showing that the plaintiff had no title, and that the lower Appellate Court ought to have allowed the defendant to prove the title of the persons set up by him, notwithstanding the execution of the *kabuliat* in favor of the plaintiff who claims under a derivative title. We consider that, upon the facts found, the defendant is not estopped by s. 116 of the Evidence Act, from denying the plaintiff's title. The words "at the beginning of the tenancy" in that section can only apply to cases in which the tenants are put into possession of the tenancy by the person to whom they have attorned, and not to a case like the present where the tenants have previously been in possession. Possession in this case was really from the ryot defendant to the plaintiff, and not from the plaintiff to the defendant. Further it cannot be said that there was any such contract between the parties as would estop the defendant from denying the plaintiff's title inasmuch as no consideration was given. Had the plaintiff inducted the defendant into possession, the giving of the possession would have been the

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consideration; but the defendant was in possession before, and all that he did was to give a *kabuliat* to a person claiming a derivative title from the last owner. This title the defendant now wishes to dispute, and we think that he is entitled to do so. We therefore set aside the judgment of the Subordinate Judge, and direct that the case be remanded to the Munsiff to allow the defendant an opportunity of proving the title of the persons set up by him. Each party will be allowed to adduce fresh evidence, but the onus of proving this will, of course, lie upon the defendant. The costs of this appeal will follow the result.

Case remanded.

ORIGINAL CIVIL.

1885.
April 16.

Before Mr. Justice Wilson.

ALI SERANG AND OTHERS (PLAINTIFFS) *v.* BEADON (DEFENDANT.)

Detention in Jail—Suit by thirteen persons jointly for damages for detention—Plaint taken off the file—Causes of action, Joinder of—Separate causes of action—Practice—Act XIV of 1882, *s.* 26.

Thirteen persons who had been committed to jail under one warrant, and for the same offence, jointly sued the Superintendent of the Presidency Jail for their wrongful detention in jail after the term of imprisonment to which they had been sentenced had expired, claiming Rs. 2,600 as damages.

The defendant applied to have the plaint taken off the file on the ground that the plaintiffs had improperly joined in one suit several distinct and separate causes of action belonging to them as separate individuals.

Held, that the plaint must be taken off the file.

THIS was an application on notice to the plaintiff for an order that the plaint in the above suit should be taken off the file, on the ground that the plaintiffs had improperly joined in the same suit several distinct and separate causes of action belonging to them as separate individuals.

The plaintiffs (13 in number) on the 8th January 1884 were engaged as firemen on board the steamer *Ellora*, and had been prosecuted in the Chief Presidency Magistrate's Court, at the instance of the agents of the steamer, for desertion from the *Ellora*, and on the 16th April 1884 were convi-