any means wish it to be understood that we consider that those facts which the Munsiff says came under his personal observation are to be taken as absolutely correct. All that we say is that the District Judge should not have excluded them from his consideration. Whether there are good grounds for accepting the result of the local investigation as correct, or rejecting it as incorrect, are matters with which we have nothing to do. It is for the District Judge to decide these questions.

For these reasons the rule will be made absolute; the order of this Court made under s. 551 of the Code of Civil Procedure will be set aside; and this appeal will be decreed, the decree of the lower Appellate Court being reversed; and the case remanded to that Court for re-trial.

The costs will abide the result.

Appeal allowed.

Before Mr. Justice Wilson and Mr. Justice Field.

KRISHNA GOBIND DHUR AND OTHERS (PLAINTIFFS) *v.* HARI CHURN DHUR AND OTHERS (DEFENDANTS.)*

1882
August 18.

Landlord and Tenant—Suit for possession—Cause of action—Limitation—Act XV of 1877, sch. II., cls. 139, 144.

The plaintiff stated that in the year 1862 he purchased a talook in which some of the defendants then held an ijara for a term of years expiring in 1868. The talook had previously been a khas mehal in the possession of the Government, and was bought by the plaintiff at an auction sale held by the Collector. The plaintiff also stated that the ijaradar defendants, in collusion with the other defendants, had continued in possession of the lands held in ijara after the term of the ijara had expired, and had refused to give up possession thereof to the plaintiff. The Judge of the lower Appellate Court found that the defendants (other than the ijaradars) had been in possession previously to the sale in 1862, and he also found that there was no evidence to support the charge of collusion with the ijaradar defendants. He therefore dismissed the suit, (which was brought in 1880) on the ground of limitation.

Held, on second appeal, that the plaintiff's cause of action arose on the expiration of the ijara, and that the suit, whetehr governed by Articles

* Appeal from Appellate Decree No. 765 of 1881, against the decree of Baboo Ram Coomar Paul Chowdhry, Subordinate Judge of Sylhet, dated the 10th February 1881, reversing the decree of Baboo Upendro Chunder Ghose, Munsiff of Nabeegunge, dated the 24th September 1880.

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139 or 144 of the Limitation Act, Act XV of 1877, was not barred on the ground of limitation.

Woomesh Chunder Goopto v. *Raj Narain Roy* (1) cited.

THIS was a suit for the recovery of possession of land brought by some of the joint owners thereof. The other joint owners were made *pro formâ* defendants. The plaint stated that the plaintiffs and their co-sharers had bought the talook, in which the lands in question were situated, on the 4th of June 1862; the talook had been a *khas* mehal of Government, and they bought at an auction sale held by the Collector. Before the date of the auction sale certain relatives of the principal defendants became *ijaradars* of the lands in dispute for a term of years which expired with the year 1274, (11th April 1868.) The plaint stated that at the end of the term the *ijaradars* did not give up the lands, but allowed the principal defendants "to hold possession of the land along with them under an adverse right." The Munsiff found in favour of the plaintiffs, and decreed the claim.

On appeal, the Judge said: "The Munsiff has found that the case is not barred by limitation; but I hold that this finding is erroneous, because the Munsiff has considered the case as similar to one brought by a reversioner for setting aside a sale made by a Hindu widow, and he says that, as the term of the ijara ran up to the year 1274, the plaintiffs could not bring a suit before. But in my judgment the analogy drawn by the Munsiff does not apply. The reason is that the possession of a purchaser from a Hindu widow, or the possession of anybody with the consent of the widow, is not a possession adverse to the right of the reversioner. Had the plaintiffs in the present case proved their statement that the contending defendants held possession of the land in collusion with the ijaradars, then the analogy drawn by the Munsiff would have applied to this case; but on reference to the evidence adduced in this case, I do not find any proof to that effect. On the other hand it has been proved by the evidence of the witnesses examined by the defendants, as well as by the thakbust papers that, for a period of more than twenty years, the contending defendants and their predecessors were in possession of the land in question." The

(1) 10 W. R., 15.

Subordinate Judge then reversed the Munsiff's decree, and dismissed the suit with costs. The plaintiffs appealed to the High Court.

Baboo *Aukhil Chunder Sen* for the appellants.

The judgment of the Court (WILSON and FIELD, JJ.) was delivered by

WILSON, J.—We think that this appeal must be allowed. It appears to us that the lower Appellate Court has mistaken the application of the law of limitation to the case. The judgment of that Court says: The plaintiffs, therefore, are bound to prove that the ijaradars were in possession of the disputed land to the end of the term of their ijara, and if it comes out that the ijaradars did hold possession up to the end of the term of the ijara, then the cause of action of the plaintiffs may be held to have arisen just as the ijara terminated, otherwise the plaintiffs were bound to bring this suit within twelve years from the time at which the ijaradars were dispossessed from the land, or from the time at which their the (ijardars) predecessors had been dispossessd, in case the defendants were never in possession.

That appears to us to be a misapprehension of the law. The facts are very short. The land was purchased by the plaintiffs, and at the time when they acquired their title it was subject to an ijara to certain persons. During the currency of the ijara, the ijaradars were dispossessed. When did limitation begin to run against the plaintiffs? Did it run from the dispossession of the ijaradars, or from the termination of the ijara? It appears to us that it clearly runs from the determination of the ijara. Prior to that date they might possibly have a right to bring a suit for declaration of their title, and the Court would have power, probably in its discretion, to give them a declaratory decree; but they certainly had no power to sue for possession. Now by what rule in the Limitation Act is their right to sue governed? It may fall either under Article 140 of the second schedule, or under Article 144. It will be convenient first to refer to Article 139. That deals with a case where the suit is by a landlord to recover possession from a tenant, and there the time runs from the determination of the tenancy. That is the only section deal-

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ing expressly with the case of a landlord as such. The next article says that in a suit by *a remainder man*, a reversioner (other than a landlord) or a devisee, for possession of immovable property, the point from which time runs is, "when his estate falls into possession." Probably in this article, the expression "other than a landlord," means "other than a landlord as such suing his tenant." If that be so, then that article would apparently govern this case, and the time would run from the termination of the ijara. If the case does not fall within that article, then it must fall within Article 144, as being a suit "for possession of immovable property or any interest therein not hereby otherwise specifically provided for." Then the period of limitation begins to run from the time when the possession of the defendant becomes adverse to the plaintiff. "Plaintiff," by the interpretation clause, includes any person through whom the plaintiff claims; but the plaintiffs do not claim through the ijaradars. Therefore possession adverse to the ijaradars is not possession adverse to the present plaintiffs. This conclusion is entirely in accordance with the construction put upon our earlier Limitation Act, in the case to which we have been referred, *Woomesh Chunder Goopto* v. *Raj Narain Roy* (1). We think, therefore, that the decree of the lower Appellate Court should be reversed, and the decree of the Munsiff in plaintiff's favour affirmed.

The appellant will have his costs in this Court and in the lower Appellate Court.

Appeal allowed.

(1) 10 W. R., 15.