

In our opinion, therefore, the lower Court has rightly given him the benefit of the presumption, having found the necessary facts in his favor.

The appeal is dismissed without costs, as nobody appears for respondent.

Appeal dismissed.

PRIVY COUNCIL.

HURO PERSHAD ROY (PLAINTIFF) v. GOPAL DAS DUTT AND
OTHERS (DEFENDANTS).

P. C.*
1882
April 20.

[On appeal from the High Court at Fort William in Bengal.]

Limitation—Bengal Act VIII of 1869, s. 29—Suit for arrears of rent.

After the expiration of the period prescribed by s. 29 of the Bengal Act VIII of 1869, a plaintiff suing for arrears of rent cannot insist on the pendency of another suit, brought by him for possession of the land, as preventing limitation from running, where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it.

In *Rani Surnomoyee v. Shoshee Mookhee Burmonee* (1), the claimant of rent was, until the setting aside of the sale that had taken place, in the position of a person whose claim had been satisfied. The right to sue in that case had been suspended; and it was, therefore, distinguishable from the present.

The plaintiff's ancestor purchased a talook from the Government, subject to an ijara therein held by the defendants, which expired in 1866. A suit brought by the plaintiff in 1874 for possession was dismissed finally in 1876, the defendant's claim to remain in possession under another tenure being allowed. The plaintiff in 1876 sued the defendants for arrears of rent for the years 1866—1872.

Held, that the suit was barred under s. 29, notwithstanding the proceedings of 1874.

APPEAL from a decree of the High Court (May 16th, 1878) affirming a decree of the Subordinate Judge of the district of the 24-Pergunnahs (20th November 1876.)

Present. SIR B. PEACOCK, SIR B. P. COLLIER, SIR R. COUCH and
SIR A. HOBHOUSE.

(1) 12 Moore's I. A., 244; S. C., 2 B. L. R., P. C., 10.

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The suit out of which this appeal arose was to recover from the defendants, who held certain chakdari tenures within the plaintiff's zemindari of Kassinagar in the 24-Pergunnahs, the rent of their holdings from April 1872 to July 1876. Both the Courts in India held the claim barred by limitation under s. 29 of Act VIII of 1869, the "Landlord and Tenant Act, 1869," prescribing a three years' limitation in suits for rent.

The question raised was whether limitation had been prevented from running by the continuance of litigation between the parties.

The predecessors in estate of the respondents had formerly been proprietors of Kassinagar in which their zemindari interest was brought to sale by the Government for arrears of revenue in 1838. The Government at the sale purchased the proprietary right, and having held it khás for some years, granted portions of it in ijara to members of the family of the former proprietors. These leases expired in 1866. Meantime in 1861 the Government had sold to Tarapersad Rai, father of the present appellant Huropersad Rai, the zemindari interest in Kassinagar.

In 1866 Huropersad Rai having succeeded his father as zemindar, sued those who had been the lessees under the expired ijaras to obtain direct possession. These tenants then alleged their right to remain in possession under certain old chakdari tenures existing within the zemindari, and held by them under their own relations from before the time of the settlement and subsequent sale, as above-mentioned, of Kassinagar. Litigation ensued, commencing in 1872, when Huropersad Rai filed his plaint for possession, contending that these tenures, of which he denied the existence, had been, if they ever existed, rendered void by the sale for arrears of revenue in 1838, and the dealing with the estate by the Government afterwards. In 1874 this suit was dismissed, and in January 1876 the High Court confirmed this decision. Huropersad Rai then brought the present suit on the 7th February 1876, to recover arrears of rent from the years 1866 to 1872 on the basis that the chakdari tenures existed.

Meantime he appealed to Her Majesty in Council against the

decision of the High Court of January 1876, but without success. In advising the dismissal of the appeal, on the 26th May 1881, their Lordships expressed their opinion that the defendants, even if not in possession under a well-proved legal title, were in possession under colour of a title which had not been avoided, though it might have been, as far back as the year 1838, and that since then time had run in their favor. It had not been shown that the Government did anything to avoid the tenures under which the defendants were in possession.

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The Subordinate Judge of the 24-Pergunnahs district dismissed the suit for rent on the issue of limitation under s. 29 of Act VIII of 1869. The High Court on appeal upheld that decision. The judgment of the Court (GARTH, C.J., and McDONELL, J.) is reported in I. L. R., 3 Calc., 819.

Mr. *R. V. Doyne* appeared for the appellant.

The respondents did not appear.

For the appellant it was argued that during the continuance of the litigation of 1874, in which the present appellant, *bonâ fide* believing that the alleged chakdari tenures did not exist, had contested the tenant's right of possession, he was unable at the same time to insist on his right against them as tenants, and, therefore, the course of limitation was suspended. Reference was made to *Rani Surnomoyee v. Shoshee Mookhee Burmonea* (1); *Dindyal Paramanik v. Radhakishori Debi* (2);

(1) 12 Moore's I. A., 244; S. C., 2 B. L. R., P. C., 10. In that case an auction sale under Beng. Reg. VIII of 1819 of the rights of patnidars in a patni talook by the zamindar for arrears of rent, was set aside by the Zilla Court for informality in the notices under that Regulation, and the patnidars who had been dispossessed were restored with mesne profits. The zamindar then brought a suit against the patnidars, under Act X of 1859 to recover the arrears of rent, which had accrued before and during the time they were out of possession. A decision that this suit, not having been brought within three years from the time when the rent first became due, was barred by s. 32 of Act X of 1859, was reversed on appeal. The Judicial Committee held that the cause of action accrued at the date of the decree cancelling the auction sale, and that the suit having been brought within three years from the date of that decree, limitation had not run.

(2) 8 B. L. R., 586.

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Eshan Chandra Rai v. Khaja Asanula (1) ; *Mohes Chandra Chakli-
dar v. Ganga Moni Dasi* (2) ; *Watson v. Dhorendra Chunder
Mookerjee* (3).

Their Lordships' judgment was delivered by

SIR R. P. COLLIER.—In this case, the sole question is as to the application of the Law of Limitation. The claim is for rent from April 1866 to June 1872. The terms of the 29th section of Act VIII of 1869 of the Bengal Council are these : "Suits for the recovery of arrears of rent shall be instituted within three years from the last day of the Bengal year, or from the last day of the month of Jeyt of the Fasi or Willayatti year in which the arrear claimed shall have become due." It is admitted that in this case the suit was not instituted within three years from the end of the year when the last rent became due, and, therefore, *prima facie*, it is barred by the Law of Limitation. This *prima facie* case is endeavoured to be answered in this way : The plaintiff says that in 1874, that is to say, two years after the last instalment of the rent sued for had accrued due, the Statute ceased to operate because he instituted a litigation which had the effect of preventing it from running, and that, therefore, a portion at least of his claim is not barred. That litigation was this: He brought three suits in the year 1874 against the tenants with respect to whose arrears of rent the present action is brought, for the purpose of ejecting them from their holdings, which were called chakdari holdings, in a certain zemindari of which he was possessed. These suits were dismissed by the first Court, and on the 25th July 1876 by the Appeal Court, on the ground of limitation. On the 7th September 1876 the appellant commenced the present suit, concurrently with which he prosecuted an appeal to Her Majesty in Council from the decree of the 25th July 1876. His appeal was dismissed on the 26th May 1881.

The appellant contends that the Statute did not run against his claim for rent after the year 1874, when he commenced these suits; and for that proposition he relies solely on the authority of the case of *Ranee Surnomoyee v. Shoshee Mookhee Burmonea* (4).

(1) 16 W. R., 79. (3) I. L. R., 3 Calc., 6.

(2) 18 W. R., 69. (4) 12 Moore's I. A., 244; S. C., 2 B. L. R., P. C., 10.

Both Courts in India have decided against the appellant upon the ground that the Statute applies, and that his case does not come within the exception to the operation of the Statute established in the case of *Ranee Surnomoyee*—an exception rather apparent than real.

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The effect of that case may be very shortly stated. The zemindar brought a certain patni taluk to sale, and sold it to a purchaser who was put in possession of it, and out of the purchase money the arrears of rent were paid. Subsequently this sale was set aside for irregularity; the zemindar had to refund the purchase money received by her, and the patnidar, who succeeded in setting it aside, obtained also the mesne profits for the time during which he was ousted. Under those circumstances this Committee, whose judgment was delivered by Sir James Colville, observe: "It is clear that until the sale had been finally set aside, she"—that is, the plaintiff—"was in the position of a person whose claim had been satisfied, and that her suit might have been successfully met by a plea to that effect." In other words, the effect of the judgment of this Board is, that under the peculiar circumstances, the patnidar having recovered possession, together with mesne profits, it was equitable that he should pay the amount of rent which was in arrear; but that amount of rent did not accrue until the sale of the patni had been set aside, and, therefore, until that time the Statute could not run. This examination of that case shows it altogether to differ from the present. Here there was no period of time in which the rent could not have been recovered. There was no period of time in which, therefore, the Statute might not have run.

This case, therefore, being inapplicable, and no other case being relied upon, their Lordships have only humbly to advise Her Majesty that the judgment appealed against be affirmed, and that this appeal be dismissed.

Appeal dismissed.

Solicitors for the appellant, Messrs. *Barrow & Rogers.*