

APPELLATE CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Beverley.

RUNJIT SINGH AND OTHERS (PLAINTIFFS) *v.* BUNWARI LAL SAHU AND OTHERS (DEFENDANTS).*

1884
July 15.

Execution—Symbolical possession, Effect of.

Where in execution proceedings symbolical possession is given to a person, such possession amounts to an actual transfer of possession as between the parties to the suit ; but such possession has no such operation against third persons who are not parties to the suit. *Juggobundhu Mukerjee v. Ram Chunder Bysack* (1) explained.

THIS was a suit for possession of a certain share in mouzah Rahimapore. So far as is material for the purposes of this report, the following statement of facts will suffice :—

On the 4th May 1866 one Bunwari Lal Sahu, in execution of a decree obtained by him against one Amrit Lal, put up for sale, and himself became the purchaser of a five-gunda share in mouzah Rahimapore, but in consequence of subsequent litigation he did not obtain possession of these five gundas until the 12th September 1873, when symbolical possession was given to him.

On the 17th September 1866 Mussumat Lagan Kooer (as benamidar of her husband Amrit Lal), sold six gundas of mouzah Rahimapore (in which were included the five gundas bought by Bunwari Lal) to one Runjit Singh, who held actual possession of his purchase until forcibly dispossessed by Bunwari Lal in the 18th January 1879.

Runjit Singh, on the 28th July 1882, brought this suit for possession of the five gundas share in mouzah Rahimapore, against Bunwari Lal, Amrit Lal, and the representative of Lagan Kooer. Runjit Singh contended that his adverse possession from 1866 to 1879 had put an end to the defendant's title under the sale in execution, whereas Bunwari Lal contended that the symbolical possession given him by the Court on the 12th September 1873 did away with the plea of limitation.

No oral evidence was taken at the hearing, the documents on

* Appeal from Original Decree No. 78 of 1883, against the decree of Alfred C. Brett, Esq., Judge of Tirhoot, dated the 24th of January 1883.

(1) 1 L. R., 5 Calc., 584 ; 5 C. L. R., 548.

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either side being admitted, with the exception of the *perwana* of the 12th September 1873.

The Subordinate Judge held that the symbolical possession given to the defendants in 1873 had the effect of vesting a sufficient possession in the defendants, so as to prevent the plaintiff's answer to the plea of limitation from setting up as against them a statutory title by limitation, and he therefore dismissed the plaintiff's suit as far as regarded his claim to the five gundas.

The plaintiff appealed to the High Court.

Baboo *Mohesh Chunder Chowdhry* (with him Mr. *C. Gregory* and Baboo *Raghunandan Pershad*) for the appellant contended that the delivery of possession by beat of drums being long after the plaintiff's purchase, and the plaintiff not having been a party to the proceedings in the suit in which symbolical possession was given to the defendants, such proceedings could not affect the plaintiff's title, or be used as evidence against him, and cited *Juggobundhu Mukerjee v. Ram Chunder Bysack* (1) and *Doyanidhi Panda v. Kelai Panda* (2).

Mr. *A. H. Khan* and Baboo *Chunder Madhub Ghose* for the respondents.

Judgment of the Court was delivered by

GARTH, C.J. (BEVERLEY, J., concurring).—We think that the learned Judge has made a mistake in this case.

It is admitted that the defendants' purchase was prior to that of the plaintiffs'; but the plaintiffs' case was, that as they were in possession of the property from the time of their purchase in September 1866 up to the year 1879, they have acquired a statutory title by limitation as against the defendants.

In answer to this the defendants say, that under their decree against Amrit Lal the plaintiffs' vendor in the year 1873, they obtained symbolical possession of the property in the usual way by process of execution, and the lower Court has held that this proceeding had the effect of vesting a sufficient possession in the defendants to prevent the plaintiffs from setting up as against them a statutory title by limitation.

We think that this is clearly a mistake. Upon reference to the
(1) 1 L. R. 5 Calc., 534; 5 C. L. R., 548. (2) 11 C. L. R., 395.

Full Bench case of *Juggobundhu Mukerjee v. Ram Chunder Bysack* (1), in which the effect of such a proceeding in execution was fully considered, we held that the delivery in execution of symbolical possession, *as between the parties to the suit*, amounted to an actual transfer of possession from the defendants to the plaintiffs; that being the only means by which, *as between the parties*, the Court could effectuate and carry out its own decree.

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But we especially guarded ourselves from saying that symbolical possession would operate as a transfer of possession as against third persons, who were no parties to the suit; and the reason for this is very plain.

A suit might be brought, and a decree obtained, by a person who has neither title nor possession, against another person, who has neither title nor possession; and if the delivery of symbolical possession in such a suit were to constitute actual possession as against the true owner, who had been in actual possession for many years, and who was no party to the suit, it would operate most unjustly.

It will be found that another case, to which we have been referred, *viz., Doyanidhi Panda v. Kelai Panda* (2) is to the same effect.

As against the plaintiffs, therefore, who were no parties to the suit, we consider that the symbolical possession, which the defendants obtained in 1873, was no possession at all.

But then the question remains, whether, as a matter of fact, the plaintiffs have, as against the defendants, acquired a statutory title by adverse possession? And as the evidence which they were proposing to bring forward upon that point was considered in the view taken by the Judge to be unnecessary, we must send the case back under s. 566 of the Code, in order that the question, whether the plaintiffs have obtained a statutory title against the defendants by adverse possession, may be properly tried. Both parties will be at liberty to adduce evidence on this point, and the Court below will return its finding to this Court, with the evidence taken as early as possible.

We will then finally decide the appeal, and the question of costs will be of course reserved.

Case remanded.

(1) 1 L. R., 5 Cal., 584; 5 C. L. R., 543.

(2) 11 C. L. R., 395.