

1886

SHIBENDEA
NARAIN
CHOWDHURI
v.
KINOO RAM
DASS.

On this point the judgment of the Court (McDONELL and BEVERLEY, JJ.) was as follows:—

A preliminary objection was taken to the hearing of this appeal on the ground that it should not have been re-admitted under s. 558. It is contended that as the pleader in this case was present, though not prepared to go on with it, the appeal was not dismissed under s. 556; and therefore it could not be re-admitted under s. 558. A similar case is that of *Buldeo Misser v. Ahmed Hossein* (1) in which we find that under similar circumstances the appeal was held to have been dismissed for default. And following that ruling, we think this case was properly re-admitted under s. 558.

[The appeal was dismissed on the facts which are immaterial to this report.]

J. V. W.

Objection overruled.

Before Mr. Justice Wilson and Mr. Justice Ghose.

1886
February 19.

SRINATH BHATTACHARJI (DEFENDANT No. 2) v. RAM RATAN DE
(PLAINTIFF)*

Bengal Act VIII of 1869, s. 27—Limitation—Suit for possession—Question of title.

Where the plaintiff alleged that he was the holder of a jote under the defendant by whom he had been forcibly dispossessed and sued for a declaration of his title and for restoration to possession; and the defendant did not question the plaintiff's tenure, nor his original title, but denied the forcible dispossession, and alleged that the plaintiff had relinquished the land: *Held*, that the suit was not one to try a question of title, but was governed by the one year's period of limitation prescribed by s. 27, Bengal Act VIII of 1869.

Jonardun Acharjee v. Haradhun Acharjee (2), and *Imam Buksh Mondul v. Momin Mondul* (3) approved.

THE plaint in this case stated that the plaintiff was the owner

* Appeal from Appellate Decree No. 1590 of 1885, against the decree of Baboo Parbati Coomar Mitter, Subordinate Judge of Mymensingh, dated the 15th of April 1885, affirming the decree of Baboo Krishna Pershad Chowdhuri, Rai Bahadur, Munsiff of Hosseinpore, dated the 28th of July 1884.

(1) 15 W. R., 143.

(2) B. L. R. Sup. Vol., 1020; 9 W. R., 513.

(3) I. L. R., 9 Calc., 280.

under zeraït right of the land in suit; and had for a long time owned and held part of it under a jote right, by residing thereon and enjoying the profits of the crops thereof, and the remaining part by letting out the same in baya jote and receiving and enjoying it on payment of rent to the landlords; that while he was thus in possession in Sraban and Pous 1288 (July-August 1881 and December 1881—January 1882) the first and second defendants, with the assistance of their servants the other defendants, illegally, forcibly and without consent of the plaintiff, cut and carried away the paddy crop; from time to time took away the straw, pulse, betel-nuts, plantains, bamboos and jack fruits, &c. from the land; and in the month of Kartick 1289 (October-November 1882) had sowed khasarie seeds on a portion of the land, and had thus dispossessed the plaintiff from the land in suit, and had been since wrongfully and without any right holding and enjoying the said lands, of which they had refused to give up possession. The plaintiff prayed for a declaration of his jote right, and for possession. The suit was brought on 15th August 1883.

1886

 SRINATH
BHATTACHARJI
V.
RAM RATAN
DE.

The second defendant, who alone defended the suit, denied the wrongful dispossession, alleged that the plaintiff had relinquished the lands, and raised, among others, the plea (the only one material to this report) that the suit was barred under Bengal Act VIII of 1869 as not having been brought within one year after the alleged dispossession.

The Munsiff found that the plaintiff had not relinquished the land, but had been forcibly dispossessed by the defendants; and that the suit being one for recovery of possession by declaration of the plaintiff's title, was not barred by the one year's limitation prescribed in the Rent Act. He, therefore, gave the plaintiff a decree, an appeal from which was dismissed by the Subordinate Judge.

The second defendant appealed to the High Court.

Baboo *Jogesh Chandra Rai* for the appellant.

Baboo *Akhil Chandra Sen* for the respondent.

The judgment of the Court (WILSON and GHOSE, JJ.) was as follows:—

1886

Srinath
Bhatta-
Charji
v.
Ram Ratan
Deb.

We are unable to agree in the view which has been taken in the lower Courts on the question of limitation. It has no doubt repeatedly been held that, where the suit is one to establish title, the case does not fall within s. 27 of the Rent Act. On the other hand we think that the Full Bench case of *Jonardun Acharjee v. Haradhun Acharjee* (1) and the case of *Imam Buksh Mundal v. Momin Mondul* (2) decided by Garth, C.J., and Mr. Justice Bose, are authorities to this effect, that where the existence of the tenure is not disputed, and the plaintiff's original title as tenant is not and never has been questioned, and where there is no question of title either raised in the suit or raised before the suit, except whether on the one hand the plaintiff has been dispossessed by force, or on the other hand his tenure has come to an end by his having relinquished it, the suit is not a suit to try title within the meaning of the rule to which we have referred, but was formerly governed by s. 23 of Act X of 1859, and is now governed by s. 27 of Bengal Act VIII of 1869. The appeal will therefore prevail, and the decrees of the lower Courts will be set aside with costs in all the Courts.

J. V. W.

Appeal allowed.

Before Mr. Justice Cunningham and Mr. Justice Ghose.

TARINI DAS BANDYOPADHYA AND ANOTHER (JUDGMENT-DEBTORS)
v. BISHTOO LAL MUKHOPADAYA (DECREE-HOLDER).^o

1886
March 11.

Limitation Act, 1877, Sch. II, Art. 179, cl. 4—Application for execution of decree—Step in aid of execution—Application to record certificate of payment by judgment-debtor in part satisfaction.

An application by a judgment-creditor to bring an execution proceeding on the file and to record his certificate of the payment of a sum of money by the judgment-debtor is an application to take some step in aid of execution of the decree within the meaning of cl. 4, Art. 179 of Sch. II of the Limitation Act.

THIS was an application for execution of a decree, dated 25th March 1880. The application was made on the 11th March

^oAppeal from Order No. 387 of 1885, against the order of J. Crawford, Esq, Judge of Nuddoa, dated the 19th of August 1885, reversing the order of Baboo Satya Charan Ganguli, Munsiff of Kisanagore, dated the 26th of June 1885.

(1) B. L. R. Sup. Vol., 1020 ; 9 W. R., 513.

(2) I. L. R., 9 Calc., 280.