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March 4.

Before Mr. Justice Straight and Mr. Justice Knox.

BISHESHAR (PLAINTIFF) *v.* MUIRHEAD (DEFENDANT.)*

Zamíndár and tenant—Lessor and lessee—Lessee taking lease direct from zamíndár—Suit by occupancy tenant to eject zamíndár's lessee—Equitable estoppel.

Where a person took a permanent lease of a cultivatory holding direct from the zamíndár without making any inquiries as to who were the cultivators and on what tenure they held; and where, the permanent lessee having commenced to build, one of the cultivators, being an occupancy tenant, subsequently brought a suit in ejectment against him:—*held* that the lessee should, by the knowledge that the land was a cultivatory holding, have been put on his guard and have made inquiries as to the exact condition of the title, and that as he had not done so the doctrine of equitable acquiescence could not be applied in his favor.

THE facts of this case sufficiently appear from the judgment of Straight, J.

Munshi *Kashi Prasad*, for the appellant.

Mr. *W. M. Colvin*, for the respondent.

STRAIGHT, J.—This suit was brought by Bisheshar Ahir for ejectment of the defendant from an area of land amounting to 15 biswas 7 dhurs situated in the zamíndári of Bechupur of which one Prayag Singh is the zamíndár. Prior to the month of June 1887, the plaintiff was the occupancy tenant of Prayag Singh and in occupation and cultivation of the land in suit with other land constituting an occupancy tenure of 11 bighas 10 biswas and 9 dhurs. It is not denied that in the month of June 1887, the defendant inclosed within a fence the land claimed by the plaintiff in the present suit along with other land; and that within the area so fenced in he has planted trees and has erected a building at the cost of a very considerable sum of money. The plaintiff says:—"in doing this you are a trespasser, who has interfered with and destroyed my enjoyment of my occupancy right." The defendant replies:—"I did so under the warrant and authority of a lease granted to me by Prayag on the 4th of June 1887." Another ground taken up by the defendants which it would be convenient to dispose of at once was that Prayag should have been made a

* Second Appeal No. 337 of 1889, from a decree of C. Donovan, Esq., District Judge of Benares, dated the 8th December 1888, confirming a decree of Pandit Raj Nath, Munsif of Benares, dated the 25th June 1888.

party to the suit; and that as through his action in granting the lease to the defendant under which the defendant acted, the plaintiff had been dispossessed, his proper procedure was under clause (*n*) s. 95 of the Rent Act against the zamíndár, and that no action having been taken within six months from the date of the dispossession he was barred by time and was not entitled to come into the Civil Courts to maintain the present suit. That view was adopted by the first Court and the same view was taken by the learned Judge in appeal, and it is upon that ground that he has upheld the decision of the first Court dismissing the plaintiff's claim.

It is impossible that I can hold this view to be sound law. The plaintiff was undoubtedly an occupancy tenant of a certain piece of land. The defendant, a stranger, came upon that land and interfered with it in such a way as to destroy the plaintiff's occupancy rights. He was undoubtedly a trespasser, and against such a person I have no doubt whatever that the plaintiff, wholly irrespective of any statutory right he might have had as against his landlord under the Rent Act, was entitled to seek relief from the Civil Court to restore possession to him as against this trespasser. I am therefore very clearly of opinion that the ground upon which the suit was dismissed by the lower Courts was wrong and that their judgments cannot be sustained.

Then comes a very grave and serious question for consideration which arises upon the contention of the learned counsel for the respondent, namely, that taking the facts as stated in the judgment of the lower Court and as found by the learned Judge, the doctrine of equitable acquiescence should be applied as against this plaintiff, and that it should be held that he by his conduct is estopped now from asserting his occupancy rights in the land to which this suit relates.

I cannot help saying that there has been a good deal of loose talk with regard to this doctrine of equitable acquiescence and that there are to be found judgments which in a way that is not altogether satisfactory applied or refused to apply it. It is well that I should, so far as my own view is concerned, very clearly point out what I understand to be the principle that should govern us.

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In enunciating this principle it must be borne in mind that we have a provision contained in our Evidence Act which at least indicates the lines upon which an estoppel of any kind should proceed. Undoubtedly if the owner of a piece of land stands by while another person professes to sell that land to a third party, and he does not interfere, but allows that other person to hold himself out to be the owner of the land and to make a transfer of it, he is not to be heard afterwards for the purpose of destroying that purchaser's title by asserting to the contrary, though he may upset that title if he can show either that the purchaser had notice of his title, constructive or actual, or that circumstances existed at the time of the purchase which, as a reasonable man should have put him upon his guard and suggested inquiry, which inquiry, if made, would have resulted in his ascertaining the title of the true owner. In that case, supposing he makes out such a case, the purchaser cannot hold on to his purchase and the true owner is entitled to his property. That principle is laid down in the cases of *Ramcoomar Koondoo* v. *Macqueen* (1), and *Uda Begam* v. *Imam-ud-din* (2), and is embodied in s. 41 of the Transfer of Property Act.

In dealing with a case like the present, where the zamíndár was granting a perpetual lease at a ground rent of an area of land of 11 bighas 15 biswas, it was in my opinion incumbent upon the defendant, knowing the circumstances, as he must be presumed to have known them, that attach to the tenure of land in India, to make inquiries as to whether subordinate to the zamíndár's interests there were cultivatory interests in the land which would have to be compensated or provided for under the lease. As regards a considerable portion of this land it is clear from the circumstance of the present plaintiff's claim and of the claim of the plaintiff in the other suits that it is and has long been a cultivated area. This was a fact in itself such as to put the defendant upon his guard and to make it incumbent on him as an ordinarily prudent and cautious man to make inquiry. If he had made inquiry the unavoidable result must have been that he would have ascertained the interest as occupancy tenant of this plaintiff and the others. He did no such thing. He

(1) L. R. I. A. Supp. Vol. 40. (2) I. L. R., 1 All., 82.

was content to take from the zamíndár, and the zamíndár alone, this perpetual lease, and it is not suggested that he ever entered into or made any inquiry. In that aspect of the matter it does not appear to me that as defendant in this cause he can be heard upon the question of acquiescence which was put forward by his learned counsel. Having failed to make inquiries he must be presumed to have had notice or to have known of the existence of the right of the plaintiff in this suit and the plaintiffs in the other suits. He must be taken to have known that there were other persons who had interests in this land upon which he was building these erections and which he was inclosing. I think therefore that there was no equitable estoppel maintainable against the plaintiff.

It has been urged that the case has aspects of hardship as regards the defendant. No doubt it is a matter for regret that he should have spent so considerable a sum of money upon the erection of the buildings; but he is in no worse position than any other man who, having failed to take the necessary precautions required of him, finds himself confronted by a person whose title he has overlooked. On the other hand, it may be said that these occupancy tenants have been placed in a serious difficulty by having their rights interfered with and their cultivation of the land, which they held on the strength of a tenant's right created and recognised by statute, disturbed.

I think therefore that the plaintiff is entitled to succeed in his suit, and I decree the appeal, and, reversing the decree of the lower Courts, decree the plaintiff's claim to possession of this land, but direct the decree be not given effect to for a period of three months from the date of the decree, during which period of time the defendant must be afforded full leave and licence to go upon the land and to remove the materials. Under all the circumstances, I think the proper order to make about costs is that each party is to bear its own costs.

KNOX, J.—I concur entirely in the order and also in the reasons for the same.

Appeal decreed.