1887

MOHESHWAR PERSHAD NARAIN SINGH v. SHEOBARAN MAHTO.

For the appellant it was contended that the *solenamah* had been confirmed by a decree. A copy of the judgment in the case in which the *solenamah* was filed has been put in, but no copy of the decree is produced. We think therefore that the lower Appellate Court was justified in holding upon the evidence that the defendants in these two cases were not parties to the *solenamah*; and when it was found that they had rights of occupancy certainly in respect of some portion of their holding, the Court below was right in dismissing the suit to eject them.

These two appeals are dismissed with costs.

H. T. H.

Appeal No. 2138 allowed.

Appeals Nos. 2139 and 2140 dismissed.

1887
June 29.

Before Mr. Justice Tottenham and Mr. Justice Norris.

BASARUT ALI AND OTHERS (1ST PARTY DEFENDANTS) *v.* ALTAF HOSAIN (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 recovery of possession claiming a right of occupancy, and the defendant, while admitting that the plaintiff had for one or two years been a tenant of a small portion of the land in suit denied his title to the remainder, or that he had acquired a right of occupancy :

Held, that the suit was one to try a *bonâ fide* question of title, and that it was not barred by one year's limitation under s. 27 of Bengal Act VIII of 1869, but was maintainable within 12 years from the date of the cause of action. *Srinath Bhattacharji* v. *Ram Ratan De* (1) distinguished.

THE plaintiff sued for possession of 10 bighas of land and for a declaration of his right thereto, alleging that it was his gorabundi ancestral jote. He alleged that he had been dispossessed by the principal defendants on the 6th Sawan 1291 F.

*Appeal from Appellate Decree No. 2399 of 1886, against the decree of W. Verner, Esq., Judge of Bhagulpore, dated the 24th of September, 1886, affirming the decree of Baboo Bomola Churn Mozoomdar, Munsiff of Jamai, dated the 25th of January, 1886.

(1) I. L. R., 12 Calc., 606.

(13th July, 1884), and that they had no right thereto except that of receiving the fixed rent payable in respect thereof. He also claimed mesne profits for the time he had been out of possession.

The principal defendants pleaded that the dispossession had taken place in Assar 1289 (June 1882), and that the suit which was instituted on the 16th May, 1885, was barred by one year's limitation. They further denied that the jote was ancestral, and stated that the plaintiff's father and grandfather lived at a place called Chura, about four coss distant from the land in suit, and that the plaintiff himself only came to Baru which adjoined these lands. They further stated that the first defendant, Basarut Ali, took some 3 bighas 19 cottahs of land from the jote of the defendant No. 4, Tika Gope, and gave it to the plaintiff in 1286 (1878-79); that in 1288 (1880-81) the rates of these jotes were increased, and both the plaintiff and defendant No. 4 began to cultivate both the plots jointly till 1289, when they took possession; and that the plaintiff had acquired no right of occupancy in the lands in suit.

Tika Gope was made a defendant, as the plaintiff alleged that he had been put in possession by the other defendants of some of the lands.

The Munsiff held that the suit was not one under s. 27 of the Rent Act, and that it was not barred by one year's limitation, but that the period of 12 years was properly applicable. He further found that the plaintiff had acquired a right of occupancy, having proved possession for more than 12 years, and that the defendants, the ticcadars, were not entitled to dispossess him. He did not, however, decide the question as to whether the rent had been permanently fixed. He accordingly gave the plaintiff a decree for possession and for mesne profits.

The defendants appealed. The lower Appellate Court concurred in the finding of the Munsiff as to the plaintiff's having established his right of occupancy and his right to recover possession, but considered that a decision should have been come to upon the question as to whether or not the rate of rent was fixed in perpetuity. As, however, that was not made a ground of objection to the decree, that Court merely confirmed the decree of the Court below and dismissed the appeal.

1887

BASARUT ALI v. ALTAF HOSAIN.

The principal defendants now preferred this second appeal to the High Court, and contended that the suit was barred by limitation.

Moulvie *Mahomed Yusuff* and Baboo *Surender Nath Roy* for the appellants.

Munshi *Shamsul Huda* for the respondent.

The judgment of the High Court (TOTTENHAM and NORRIS, JJ.) was as follows :—

The only point taken in this second appeal is that the plaintiff's suit, which is one to recover land of which he had been dispossessed by the defendant, his landlord, is barred by limitation as not having been brought within one year from the date of dispossession.

According to the plaintiff's case, as stated in the plaint, the suit was brought within one year from the date of dispossession. According to the defendant's case, dispossession took place some two years before the suit was brought.

The Courts below, however, found it immaterial to decide which date of dispossession was correct, because they held that as this was a suit to establish plaintiff's title to recover possession of land, the limitation would be 12 years and not one year. This question was decided only by the first Court. The lower Appellate Court was silent in respect of that issue. We must conclude that the point was abandoned because the defendant-appellant must have acquiesced in the judgment of the first Court that, the suit being one for title, one year's limitation would not apply.

We are asked in this appeal to hold that one year's limitation does apply to the case, and that the suit should be sent back for a clear finding as to the date when the cause of action accrued.

In support of this contention we have been referred to a decision of this Court in *Srinath Bhattacharji* v. *Ram Ratan De* (1), and to a recent decision by the Chief Justice and Mr. Justice Cunningham in second appeal No. 1215 of 1886. The reported case held that, although the plaintiff might ask for a declaration of title,

(1) I. L. R., 12 Calc., 606.

still one year's limitation, under s. 27 of the Rent Act of 1869, would apply where the existence of the tenure is not disputed and the plaintiff's original title, as tenant, had not been questioned, and where there is no question of title 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 Court held that the suit was not a suit to try title within the meaning of the rule referred to.

In the present case, however, we find that the defendant from the commencement denied that the plaintiff had any title whatever. Of the 10 bighas claimed, he only admitted that, during one year or for two years, the plaintiff had been a tenant in respect of something under 4 bighas. On the other hand, the plaintiff set up a gorabundi tenure, and prayed the Court to decide that question of title in his favor. We think, therefore, that this case differs from the case of *Srinath Bhattacharji* v. *Ram Ratan De* (1), and that there being a *bonâ fide* question of title, the suit was maintainable within 12 years from the date of the cause of action.

The appeal is dismissed with costs.

H. T. H. *Appeal dismissed.*

Before Sir W. Comer Petheram, Knight, Chief Justice.

IN THE MATTER OF THE PETITION OF SHARUP CHAND MALA. 1887 *June* 10.

SHARUP CHAND MALA *v.* PAT DASSEE.*

Review—Error of law—Law, Mistaken view of—Civil Procedure Code (Act XIV of 1882), *s.* 623.

A review of judgment may be granted (if it is necessary for the ends of justice that the judgment should be reviewed), where there is an error of law on the face of the judgment, or where the decision of the Court has proceeded upon a mistaken view of the law. *Rewa Mahton* v. *Ram Kishen Singh* (2) referred to.

In this case, without deciding whether there was or not any error in law, the application for review of judgment was refused on the ground that it did not appear there was any danger of its causing a miscarriage of justice.

* Civil Rule No. 1025 of 1887 on an application for review of judgment in appeal from Appellate Decree No. 1272 of 1886.

(1) I. L. R., 12 Calc., 606. (2) I. L. R., 14 Calc., 18; I. L. R., 13 I. A., 106.