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the Madras High Court based on decisions of English cases on Lord Romilly's Act does not commend itself to us. That Act provides a summary procedure for obtaining relief by petition and not by suit as provided in section 539 of the Code of Civil Procedure, and the provisions of the English Statute differ materially from those of section 539.

We allow this appeal, and setting aside the decree of the Court below, remand the case under section 562 of the Code of Civil Procedure with directions to re-admit it under its original number in the register and to try it on the merits. The appellants will get their costs of this appeal. Other costs hitherto incurred will abide the result.

Appeal decreed and cause remanded.

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January 31.

Before Sir Arthur Strachey, Knight, Chief Justice and Mr. Justice Knox.

DALIP RAI (DEFENDANT) *v.* DEOKI RAI (PLAINTIFF).*

Act No. XII of 1881 *(N.-W. P. Rent Act), section 95(n)—Land-holder and tenant—Dispossession of tenant—Effect on tenant's right of his neglecting to apply under section 95 to be restored to possession.*

Held that the failure of a tenant to apply under section 95*(n)* of the North-Western Provinces Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of dispossession prescribed for such applications by section 96*(e)* has the effect not only of barring the tenant's remedy, but of extinguishing the tenant's right to the occupancy of the land.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Haribans Sahai*, for the appellant.

Munshi *Gobind Prasad*, for the respondent.

STRACHEY, C. J.—The question raised by this appeal is whether the failure of a tenant to apply under section 95(*n*) of the North-Western Provinces Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of the dispossession prescribed for such applications by section 96(*e*) has the effect of

* Appeal No. 27 of 1898 under section 10 of the Letters Patent.

extinguishing his title or only of barring his remedy. The facts as found by the lower appellate Court are these. The plaintiffs, are zamindars, and the land in suit forms part of their sir. Previous to the year 1832 the defendant was in possession of the land as the plaintiff's tenant-at-will. In that year the plaintiffs, without taking any of the steps necessary under the Rent Act for the defendant's ejectment, wrongfully dispossessed him of the occupancy of the land and assumed the cultivation of it by a shikmi tenant whom they put in possession and whose name was entered in the settlement papers. The defendant made no application under section 95(*n*) for the recovery of the occupancy of the land. In 1895 he forcibly entered upon the land and resumed possession. In 1898 the plaintiffs brought the present suit in the civil Court, claiming his ejectment from the land as a trespasser, and damages. The defendant pleaded that he had never ceased to have the rights of a tenant in respect of the land, and that the suit was not cognizable by a civil Court. The Court of first instance dismissed the suit, but the lower appellate Court decreed the appeal and the suit, holding that the defendant's tenancy became extinguished on his failure to apply under section 95(*n*) within six months from the date of the wrongful dispossession, and that when, in 1895, he obtained possession, he did so as a trespasser. On appeal by the defendant to this Court Mr. Justice Blair took the same view, (see I. L. R., 20 All., 471) and in this further appeal under the Letters Patent we have to consider whether it is correct.

The question is not altogether free from difficulty. There appears to be no reported case in point. The position of the defendant, when he obtained possession in 1895, was this. On the one hand, he had clearly no remedy by legal proceedings. By virtue of the opening words of section 95 of the Rent Act he never had any remedy in a civil Court. His only remedy in a revenue Court, namely, an application under section 95(*n*), was barred by section 96(*e*). On the other

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hand, section 96(*e*) in terms enacts only that an application under section 95(*n*) shall not be brought after six months from the date of the wrongful dispossession; it contains no provision similar to section 28 of the Limitation Act, to the effect that at the determination of the prescribed period the tenant's right to the occupancy of the land shall be extinguished. Section 28 of the Limitation Act itself obviously does not affect applications under the Rent Act. The view expressed in *Mazhar Rai* v. *Ramgat Singh* (1) that the tenancy of a tenant of agricultural land can only be determined in one or other of the manners mentioned in the Rent Act, applies to tenants-at-will, who, like other tenants, are protected by section 34 from ejectment otherwise than in execution of a decree or order under the Act; and among the manners specially mentioned, extinction by lapse of the period prescribed by section 96(*e*) is not one. If within the six months period the defendant had, without the assistance of the revenue Court, regained possession of the land, there can be no doubt that he would have held it under his original tenancy, which, in that case, would have undergone no legal determination or interruption. The pleader for the appellant contended that it is a general principle of law that in the absence of express words to the contrary a statute of limitation only bars the remedy and does not extinguish the right, and that, as the Rent Act contains no such express words, the defendant's title, notwithstanding the lapse of the prescribed period, still existed at the time when he regained possession.

The nearest analogy available upon the question is afforded by the Indian enactments relating to limitation prior to Act No. IX of 1871, section 29 of which first introduced the rule now contained in section 28 of the present Act. The old Bengal Regulations of Limitation, III of 1793 and II of 1805, in reference to suits for the recovery of immovable property, in terms limited the remedy only and did not on the lapse of

(1) (1896) I. L. R., 18 All., 290, at p. 294.

the prescribed period expressly extinguish the title. Again, section 1 of Act No. XIV of 1859 only provided that no suit should be maintained in any Court of Judicature unless the same were instituted within the period of limitation made applicable to a suit of that nature, and of such suits clause 12 of the section specified suits for the recovery of immovable property, or of any interest in immovable property. Notwithstanding the terms of these enactments it was clearly settled that upon the expiry of the prescribed period for such a suit, not only was the claimant's remedy barred, but his title extinguished in favour of the party in possession, however wrongfully that possession might have originated; see *Ganga Golind Mundul* v. *The Collector of the Twenty-four Pergunnahs* (1), and the other cases mentioned by Westropp, C.J., in *Sitaram Vasudev* v. *Khanderav Balkrishna* (2). In *Bindrabun Chunder Roy* v. *Tarachand Bundopadhya* (3), decided under Act No. XIV of 1859, Mr. Justice Markby said that it was "an accepted doctrine in our Courts that if a party who has been twelve years out of possession and whose suit is therefore barred should again get into possession, he is not (to use an English phrase) remitted to his old title; our Courts adopting, as pointed out by Sir Lawrence Peel in *Sibchunder Doss* v. *Sibkissen Banerjee* (4), the English rule that there is no remitter to a right for which the party had no remedy by action at all." In the same case Mr. Justice Birch said:—"I apprehend it to be now well established that, when his remedy is barred, the right and title of the claimant is extinguished and transferred to the person in possession." The only authorities for the contrary view which have been cited to us are two Madras cases, in one of which, *Doe d, Kullammal* v. *Kuppu Pillai* (5), decided in 1862, it was held that "the Indian Law of Limitation bars the remedy only, but does not extinguish the right," and in the other, *Govindan*

(1) (1867) 11 Moo. I. A. 345.
(2) (1876) I. L. R., 1 Bom. 286.
(3) (1873) 11 B. L. R., 237.
(4) (1854) 1 Boul. 70.
(5) (1862) 1 Mad. H. C. Rep., 85.

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Pillai v. *Chidambara Pillai* (1), decided in 1862, it was held that section 12 of Act No. XIV of 1859 did not extinguish the right at the lapse of the statutory period. Both these cases, however, were decided before the decision of the Privy Council in the case reported in 11 Moo. I. A., 345, upon which the Bengal judgments were chiefly based. The later cases support, we think, the view expressed by Mr. Mitra that where a law of limitation regarding the possession and dispossession of immovable property in terms limits the suit only, its effect is nevertheless generally to extinguish the title, unless there co-exists with it a statute such as Bombay Regulation V of 1827, fixing a longer period for the acquisition of title by positive prescription: see Mitra's Law of Limitation and Prescription in British India (3rd ed.), pp. 3, 13, 35, 36, 52, 325, and *Rambhat Agnihotri* v. *The Collector of Puna* (2). It is true that in all these cases there was no question of landholder and tenant. The question was not whether, under a special law prescribing a period of limitation, a tenant's right was extinguished in favour of a landholder wrongfully dispossessing him, but whether, under the general limitation law, an original owner's right was extinguished in favour of a wrongful occupant holding adversely for the prescribed period. The cases, however, so far assist us that they establish, first, that a provision as to limitation which in terms merely bars the remedy may have the further effect of extinguishing the right, and, secondly, that as regards the possession and dispossession of immovable property or an interest therein, the latter effect generally follows. If this view is correct, the presumption appears to be that, on the lapse of the six months' period prescribed by section 96(*e*) of the Rent Act, the defendant's right to the occupancy of the land in suit was extinguished, and that the possession which he afterwards forcibly obtained was not that of a tenant who could only be ejected through a revenue Court, but that of a trespasser who might be ejected through a

(1) (1866) 3 Mad. H. C. Rep. 99. (2) I. L. R., 1 Bom., 592, at p. 599.

civil Court. If, on the other hand, this view is not correct, the result would seem to be that there is no limit of time within which the defendant might not forcibly re-occupy the land and assert the continuance of his tenancy. Such a state of things would lead to great insecurity in the occupancy of land by tenants holding under the landholder in good faith and in ignorance of the dispossessed tenant's claim, and to the substitution of irregular and violent methods of recovering possession for the methods which the Legislature has provided for a dispossessed tenant's benefit. We do not think that a construction of section 96(*e*) of the Rent Act which involves these consequences can be correct. We think that the lower appellate Court and Mr. Justice Blair have rightly construed the section, and we dismiss this appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

P. C.
1898
June
17*th*, 21*st*
and 22*nd*.
November
26*th*.

MICHAEL MACAULIFFE, PLAINTIFF-APPELLANT, AND CHARLES WILSON, DEFENDANT-RESPONDENT.

On Appeal from the High Court for the North-Western Provinces.

False representation alleged against vendor by purchaser. Inducement not proved. Shareholder buying shares from a Director of the Company.

To maintain a suit for damages upon a false representation alleged by purchaser against vendor, it must be established that the plaintiff was induced by the misrepresentation to enter into the contract.

Shares in a Banking Company which shortly afterwards went into liquidation, were sold by a Director to the plaintiff, a shareholder. The latter now sued the vendor, alleging inducement to buy the shares by the vendor's false representations as to the state of the Bank's affairs.

Both the Courts below concurred in finding that oral representations as to the latter alleged to have been made by the defendant to the plaintiff were not proved. Those Courts, however, had concurred in finding that the defendant, though he was not responsible for false balance-sheets issued before 1890,

Present:—LORDS WATSON, HOBHOUSE, and DAVEY and SIR R. COUCH.