APPELLATE CIVIL.

1901
November 20.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

GOBIND PRASAD (PLAINTIFF) *v.* MOHAN LAL (DEFENDANT).*

Possession—Nature of interest in immovable property acquired by virtue of mere possession.

A person in possession of land without title has an interest in the property which is heritable and good against all the world except the true owner, an interest which, unless and until the true owner interferes, is capable of being disposed of by deed or will, or by execution sale, just in the same way as it could be dealt with if the title were unimpeachable. *Asher* v. *Whitlock* (1), *Sundar* v. *Parbati* (2) and *Brindaban Chunder Rao* v. *Tara Chand Banerjee* (3) referred to.

IN the suit out of which this appeal arose the plaintiff claimed possession of a house situated in the city of Benares. He claimed the property as heir of one Balkishan, the son of Bindraban, who died on the 6th July, 1893. The property originally belonged to one Hori Lal, who died childless more than thirty years ago, leaving a widow, Musammat Jhunna. For a number of years prior to the death of Jhunna, Bindraban, who was a natural son of one Batuk, the brother of Jhunna, lived with Hori Lal and Jhunna, and, it is alleged by the defendant, was adopted by Hori Lal. Jhunna made a will, dated the 3rd December, 1880, whereby she purported to leave to Bindraban all the movable and immovable properties then in existence. After the death of Jhunna, Bindraban remained in undisturbed possession of the property in suit until his death on the 6th July, 1895, whereupon his son Balkishan became possessed of it. Balkishan died on the 6th September, 1895, and thereupon Musammat Gaura, the widow of Bindraban and mother of Balkishan, entered into and remained in possession until her death on the 12th September, 1895. She made a will, dated the 10th September, 1895, whereby she purported to leave the property in dispute to the defendant, who was the nephew of Bindraban, being the son of Bindraban's sister, Musammat Kungi. The plaintiff therefore as uncle of Bindraban would have been heir to Bindraban and to

* First Appeal No. 147 of 1898 from a decree of Babu Nil Madhab Rai, Subordinate Judge of Benares, dated the 21st March 1898.

(1) (1865) L. R., 1 Q. B., 1. (2) (1889) I. L. R., 12 All., 51.
(3) (1878) 20 W. R., C. R., 114.

1901

GOBIND PRASAD v. MOHAN LAL.

Balkishan if the adoption of Bindraban by Hori Lal set up by the defendant was not proved; but if the adoption was proved he would have had no title to the property, being a stranger to the family of Hori Lal.

The Court of first instance (Subordinate Judge of Benares) found that Bindraban had been adopted by Hori Lal, and that consequently he had no interest in the property, and accordingly dismissed the suit.

The plaintiff thereupon appealed to the High Court.

Pandit *Sundar Lal* and Munshi *Gokul Prasad*, for the appellant.

Pandit *Moti Lal* and Pandit *Madan Mohan Malaviya*, for the respondent.

THE COURT (STANLEY, C. J., and BURKITT, J.), after discussing the evidence as to the adoption, came to the conclusion that no adoption of Bindraban by Hori Lal had in fact taken place. This being the case, the defendant could not claim to have the suit dismissed on the strength of his own title to the property as part of the estate once of Hori Lal. On the question whether the plaintiff had such an interest in the property as would support a suit for recovery of possession against a person who, having no better title than himself, had ousted him, the Court found as follows:—

There remains then one matter for our determination. The property in dispute admittedly belonged to Hori Lal, and is now in the possession of the defendant. Neither the plaintiff nor the defendant belongs to the family of Hori Lal, and neither of them occupies the position of a reversioner to Hori Lal. Can a suit in ejectment under such circumstances be maintained by the plaintiff as the heir of Balkishan or of Bindrāban, both of whom were mere trespassers? Has a trespasser, whose title by prescription has not matured, such an estate as would entitle his heir to maintain a suit in ejectment against a party who has ousted him from possession and who is not the true owner? This question is the subject of legal decision. In the case of *Asher* v. *Whitlock* (1) it was held that a person in possession of land without other title has a devisable interest, and that the heir of his

(1) (1865) L. R., 1 Q. B., 1.

devisee can maintain ejectment against a person other than the true owner who has entered upon the land. In that case a party had, in the years 1842 and 1850, enclosed a piece of land from the waste of a manor and built upon it. He occupied the land until his death in 1860. By his will he devised the land to his wife during widowhood, and after her death or re-marriage, whichever event should first happen, to his only daughter in fee. The widow remained in possession with her daughter, and in 1861 the widow married the defendant. Early in 1863 the mother died, and the daughter died shortly afterwards. The defendant remained in possession, and a suit to eject him was brought by the heir-at-law of the daughter, and was determined in favour of such heir. This decision was approved of by their Lordships of the Privy Council in the case of *Sundar* v. *Parbati* (1) and it seems to us to govern the present case. In the case of *Brindabun Chunder Roy* v. *Tara Chand Banerjee* (2) it was held that such an interest in land was capable of being sold in execution. The law appears to be that a person in possession of land without title has an interest in the property which is heritable and good against all the world except the true owner, an interest which, unless and until the true owner interferes, is capable of being disposed of by deed or will or by execution sale, just in the same way as it could be dealt with if the title were unimpeachable.

For the foregoing reasons we allow the appeal. We set aside the judgment and decree of the lower Court, and give a decree in favour of the plaintiff appellant for possession of the property in suit with costs in both Courts.

Appeal decreed.

(1) (1889) I. L. R., 12 All., 51. (2) (1873) 20 W. R., C. R., 114.