

the Court below is right. It is quite true that a *bond fide* purchaser, who is not himself the decree-holder, does not lose his title to the property by the subsequent reversal of the decree in execution of which he bought. But in the present case the language of section 316 of the Code of Civil Procedure shows that no title had passed to the purchaser. This being so, the decree of the Court below was, in my opinion, the right decree to pass. I therefore dismiss this appeal with costs.

Appeal dismissed.

Before Mr. Justice Aikman and Mr. Justice Griffin.

THAMMAN PANDE (DEFENDANT) v. THE MAHARAJA
OF VIZIANAGRAM (PLAINTIFF)*

Act No. XV of 1877 (Indian Limitation Act), schedule II, Article 144—Limitation—Adverse possession—Lease—Possession derived from a lessee not necessarily adverse as against the lessor.

Held that possession acquired during the continuance of a lease will not ordinarily be adverse possession as against the lessor until at any rate such time as the lessor becomes entitled to possession. The principle of *Muhammad Husain v. Mul Chand* (1) and *Sharai Sundari Dabia v. Bobo Pershad Khan Chowdhuri* (2), *Womes Chunder Goopto v. Raj Narain Roy* (3), *Krishna Gobind Dhur v. Hari Churn Dhur* (4), *Sheo Sohye Roy v. Luchmashur Singh* (5) and *Gunga Kumar Mitter v. Asutosh Gossami* (6) followed. *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (7) referred to. *Lekharaj Roy v. The Court of Wards on behalf of the Rajah of Durbhangah* (8), *Brindaban Chunder Sircar Chowdhry v. Bhoopal Chunder Biswas* (9), *Prosunomoyi Dasi v. Kali Das Roy* (10) and *Gobinda Nath Shaha Chowdhry v. Surja Kantha Lahiri* (11), not followed.

THE facts of this case are as follows:—

The plaintiff leased the village of Saheli to one Girish Chandra from 1297 to 1309 Fasli. During the continuance of the lease the defendant in some manner got possession of 8 plots of land in the village, from which, some two years before the expiry of the lease, the plaintiff brought the present suit to eject him. The

* Second Appeal No. 753 of 1905, from a decree of Maulvi Syed Zein-ul-Abdin, Subordinate Judge of Jaunpur, dated the 9th of May 1905, modifying a decree of Maulvi Shams-ud-din Khan, Munsif of Jaunpur, dated the 3rd of October 1904.

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| (1) (1904) I. L. R., 27 All., 395. | (6) (1896) I. L. R., 23 Calc., 868. |
| (2) (1886) I. L. R., 13 Calc., 101. | (7) (1878) I. L. R., 4 Calc., 327. |
| (3) (1868) 10 W. R., 15. | (8) (1870) 14 W. R., 395. |
| (4) (1882) I. L. R., 9 Calc., 367. | (9) (1872) 17 W. R., 377. |
| (5) (1884) I. L. R., 10 Calc., 577. | (10) (1881) 9 C. L. R., 347. |
| (11) (1899) I. L. R., 26 Calc., 460. | |

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defendant pleaded that he had purchased the plots in suit on the 21st of September 1897 from one Piaj Umar, whom he alleged to be to the owner thereof. He further contended that, if his vendor was not the true owner, he had acquired a title by adverse possession. The Court of first instance (Munsif of Jaunpur) gave the plaintiff a decree for possession of six out of the eight plots claimed, but dismissed it as to the remaining two plots. The Court found that the defendant had established a claim to two of the plots by adverse possession of himself and his vendor. On appeal by the plaintiff the lower appellate Court (Subordinate Judge of Jaunpur) held that possession during the term of the lease was not adverse to the owner, and accordingly decreed the plaintiff's claim in full. Both Courts found that the plaintiff's vendor was not the owner of the land. The defendant appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the appellant.

Dr. *Satish Chandra Banerji*, for the respondent.

AIKMAN and GRIFFIN, J.J.—This appeal arises out of a suit brought by the plaintiff, who is respondent here, for possession of 8 plots of land, situated in the village of Saheli, which admittedly belongs to the plaintiff. This village was given in lease by the plaintiff to one Girish Chandra. The period of the lease was from 1297 to 1309 Fasli. The present suit was brought within two years of the expiry of the lease to eject the defendant, Thamman Pande, who is appellant here, from 8 plots of land situated in the village. The defendant's case was that he had purchased the plots on the 21st of September 1897 from one Piaj Umar, whom he alleged to be the owner of the plots. The defendant further contended that, if his vendor was not the true owner, a title by adverse possession had been acquired. The Munsif dismissed the suit as to two of the plots and passed a decree in favour of the plaintiff for ejection of the defendant from the remaining six plots. The defendant appealed and the plaintiff filed an objection under section 561 of the Code of Civil Procedure. The learned Subordinate Judge dismissed the defendant's appeal, allowed the plaintiff's objection and decreed his claim in full. The Courts below found that the plaintiff's vendor was not the

owner of the land. But the Court of first instance held that the defendant had established a claim to two of the plots by adverse possession of himself and his vendor. The learned Subordinate Judge, following a ruling of the Calcutta High Court—*Sharat Sundar Dabia v. Bhobo Pershad Khan Chowdhuri* (1), held that possession during the term of the lease was not adverse to the zamindar. If that view is correct this appeal must fail. For the appellant reliance is placed on certain other rulings of the Calcutta High Court, namely, *Lekhraj Roy v. The Court of Wards on behalf of the Rajah of Durbhangah* (2), *Brindabun Chunder Sircar Chowdhry v. Bhoopal Chunder Biswas* (3), *Prosunnomoyi Dasi v. Kali Das Roy* (4) and *Gobinda Nath Shaha Chowdhry v. Surja Kantha Lahiri* (5). No doubt these rulings support the view contended for by the appellant's learned vakil, but on this question there is a great conflict of authority in the Calcutta High Court. On the other side may be cited in addition to the case relied on by the lower appellate Court the following rulings:—*Womesh Chunder Goopto v. Raj Narain Roy* (6), *Krishna Gobind Dhur v. Hari Churn Dhur* (7), *Sheo Sohye Roy v. Luchmeshur Singh* (8) and *Gunga Kumar Mitter v. Asutosh Gossami* (9). Attention may also be called to what was said by Mr. Justice Markby in the case of *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (10). At page 329 of the judgment that learned Judge said:—"By adverse possession I understand to be meant possession by a person holding the land on his own behalf of some person other than the true owner, the true owner having a right to immediate possession." It has been held by this Court—see the case *Muhammad Husain v. Mul Chand* (11)—that possession during the period of a usufructuary mortgage is not adverse to the true owner. We consider the same principle applies to possession during the term of a lease, when all that the owner is entitled to is the yearly payment of the consideration reserved by the lease. It would be unjust to hold that a lessor, who was regularly in receipt of the rent reserved by the lease

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(8) (1884) I. L. R., 10 Calc., 577.

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(9) (1896) I. L. R., 23 Calc., 868.

(5) (1899) I. L. R., 26 Calc., 460.

(10) (1878) I. L. R., 4 Calc., 327.

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for a long term of years, and who therefore had nothing to put him on inquiry, might find at the expiration of the term of his lease that a considerable portion, it may be, of his property had passed out of his hands by a trespasser taking possession of it without his knowledge. We are quite unable to appreciate the reasoning of the learned Judges who decided the latest case in the Calcutta High Court, namely, *Gobinda Nath Shaha v. Surja Kantha* (1). We are of opinion that the decision of the Court below was right and we dismiss this appeal with costs.

Appeal dismissed.

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May 28.

Before Mr. Justice Banerji.

GHASITI BIBI AND OTHERS (JUDGMENT-DEBTORS) v. ABDUL SAMAD (DECREE-HOLDER) AND LIAQAT HUSAIN (AUCTION-PURCHASER).*

Civil Procedure Code, sections 103, 310 and 588 (8)—Appeal—Order refusing to restore an application under section 310 which had been dismissed for default of appearance.

Held that no appeal lies from an order refusing to restore to the file of pending applications an application under section 310 of the Code of Civil Procedure which has been dismissed for default of appearance. The principle applied in *Jung Bahadur v. Mahadeo Prasad* (2), *Ningappa v. Gangawa* (3) and *Raja v. Strinivasa* (4), followed.

THE facts of this case are as follows:—

There was a decree against Musammat Ghasiti Bibi and others, in execution of which the property of the judgment-debtors was sold by auction on the 21st of July 1906 and was purchased by one Liaqat Husain. An application under section 310 of the Code of Civil Procedure was presented by one Kallu, who described himself as the agent of two of the judgment-debtors, praying to have the sale set aside. The auction-purchaser resisted this application, and the 15th of September 1906 was fixed for hearing. On that date the applicant did not appear, and consequently the application was rejected for default of appearance. On the 20th of September 1906 Ghasiti Bibi made an application to the Court asking for the restoration of the case. This application purported to have been made under section 103 of the Code of

* First Appeal No. 343 of 1906, from a decree of Babu Prag Das, Subordinate Judge of Allahabad, dated the 26th of November 1906.

(1) (1899) I. L. R., 26 Calc., 460.

(3) (1885) I. L. R., 10 Bom., 433.

(2) (1903) I. L. R., 31 Calc., 207.

(4) (1888) I. L. R., 11 Mad., 819.