

1917

March, 23.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

RAJENDRA KISHORE SINGH (PLAINTIFF) v. BHAGWAN SINGH,
AND OTHERS (DEFENDANTS).*

Act No. IX of 1908 (Indian Limitation Act), schedule I, articles 138, 144—Limitation—Suit for joint possession—Purchase of undivided share—Effect of an order for formal possession obtained against the judgement-debtor.

On the 20th of March, 1900, plaintiff purchased at an auction sale in execution of a decree an undivided one-third share in certain muafi land. On the 20th of September, 1900, plaintiff obtained, under section 819 of the Code of Civil Procedure, 1882, formal possession of the property purchased. On the 18th of September, 1912, plaintiff filed a suit for recovery of joint possession of the share.

Held that the suit was within time. *Mangli Prasad v. Debi Din (1), Jagannath v. Milap Chand (2), Narain Das v. Lalta Prasad (3) and Rahim Bakhs v. Muhammad Hafiz (4)* referred to.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case sufficiently appear from the judgement under appeal, which was as follows :—

“ In this case the plaintiff purchased certain property at a sale in execution of a decree on the 20th of March, 1900. At some date shortly afterwards a sale certificate was issued. If I had any doubt about it, which I have not, it would be perfectly clear from order XXI, rule 94, of the Code of Civil Procedure, that in such a transaction the sale becomes absolute before the issuing of the sale certificate. In the ordinary transaction where nothing intervenes a sale becomes absolute when the transaction is completed by payment of the purchase-money. In this case the plaintiff brought his suit more than twelve years from the date of the sale becoming absolute. There can be no question about that, and by article 138 of the first schedule to the Limitation Act the suit is barred, having been instituted after the expiration of twelve years from the date when the sale became absolute. But it is said, and the contention has apparently been adopted in the courts below, that if the plaintiff had been in possession during the interval he could bring his suit within twelve years from that date, basing his claim, presumably, upon subsequent dispossession, as he had recovered possession under his sale certificate. It is said that he did in fact obtain possession four days within twelve years from the commencement of the suit by, what has been called, for want of a better name, symbolical possession under the Code. Now there is wealth of learning upon the subject and a perfect jungle of authorities, and I am in the unhappy position of knowing that whatever I decide I shall certainly disagree with some courts and probably with half a dozen Judges. Applying my mind therefore to the plain language of the Code, I find that order

* Appeal No. 70 of 1916, under section 10 of the Letters Patent.

(1) (1897) I. L. R., 19 All., 499. (3) (1898) I. L. R., 21 All., 269.

(2) (1906) I. L. R., 28 All., 722. (4) (1909) 10 Indian Cases, 319.

1917

RATENDRA
KISHORE
SINGH
v.
BHAGWAN
SINGH.

XXI, rule 95, provides for the recovery of possession by a purchaser against a judgement-debtor when the latter is in occupation. That was the case in the present instance. The judgement-debtor was in occupation. No steps were taken by the purchaser under rule 98, and he never recovered possession under that rule. He did, however, obtain under rule 96 what has been called symbolical possession by means of the ceremony therein described. That ceremony to my mind has no application and was never intended to have any application and produces a ludicrous result if it is applied to a case where the judgement-debtor himself is in wrongful possession. The whole idea of the operation is merely to transfer, by official act, the nominal possession where the persons actually in occupation are in lawful possession and cannot lawfully be turned out. It is superfluous and idle where the person in occupation is wrongfully in occupation and can be turned out the next day. The rule itself begins with the words:—"Where, the property sold is in the occupancy of a tenant or other person entitled to occupy the same," and yet it is said that that rule is applicable to a person not entitled to occupy the same. In my view, so-called symbolical possession under circumstances to which the rule does not apply is no possession at all. It therefore follows that the plaintiff has brought his action more than twelve years after the date when the right to possession accrued to him, namely, the date of the sale becoming absolute. He has failed to show that he obtained any possession within the legal interpretation of that term during the interval. It is said that the judgement-debtor in the case was in joint possession. As he appears also to have been in joint occupation, I do not see that this makes any difference. But in any case the plaintiff could have proceeded to get rid of him under rule 95, as soon as the sale became absolute. In my opinion rules 95 and 96 are mutually exclusive, and together cover the whole ground. As I have already said, whatever view I take I am bound to disagree with some of the reported decisions as also with some decisions of this Court, if I understand them rightly. Taking an independent view, as I feel bound to do in the present bewildering state of the authorities, I allow this appeal, and, setting aside the decrees of both the courts below, dismiss the plaintiff's suit with costs in all courts."

The plaintiff appealed.

Babu *Sarat Chandra Chaudhri* and *Munshi Panna Lal*,
for the appellants.

The Hon'ble Pandit *Moti Lal Nehru* for the respondents.

RICHARDS, C. J.—This appeal arises out of a suit in which the plaintiffs claimed joint possession of a one-third share in certain muafi land. This share originally belonged to one Balwant who made a mortgage of it. A decree was obtained on foot of this mortgage on the 18th of April, 1899. The decree was made absolute on the 20th of November, 1899, and in execution of that decree the property was put up for sale on the 20th of March,

1917

RAJENDRA
KISHORE
SINGH
v.
BHAGWAN
SINGH.

1900, and purchased by the plaintiff's father. On the 20th of September, 1900, the plaintiff's father obtained formal possession under section 319 of the Code of Civil Procedure of 1882, which corresponds with order XXI, rule 96, of the present Code. The present suit was instituted on the 18th of September, 1912. The defendant pleaded limitation. Both the courts below overruled this plea, but on second appeal to this Court a learned Judge overruled both the courts below and dismissed the plaintiff's suit on the ground of limitation. It is admitted that if time began to run against the plaintiff from the 20th of September, 1900, the suit is within time. On the other hand, if time began to run from the date at which the sale became absolute, the suit is barred by limitation. I am quite satisfied (as I think the trial court and the lower appellate court were) that the property was of that nature which did not permit of actual physical possession being given to the auction purchaser. There may have been tenants, but there were certainly other "persons entitled to occupy the land." The auction-purchaser had only purchased an undivided third. I am clearly of opinion that time begun to run from this formal possession. Order XXI, rule 95, provides for actual possession being given where the nature of the property permits actual possession to be given. It seems to me that if actual possession was given under rule 95 and the judgement-debtor immediately afterwards re-took possession, it would be impossible to contend that time did not begin to run against the auction-purchaser from the time when the defendant re-took possession. Order XXI, rule 96, provides for the *formal* delivery of possession where the nature of the property does not permit of *actual* possession being given, but it is clear to me that the legal effect of *formal* possession must be the same as the *actual* possession in the rule immediately preceding. This view has been taken consistently by this Court in a number of cases commencing with the case of *Mangli Prasad v. Debi Din* (1); *Narain Das v. Lalta Prasad* (2); *Jagan Nath v. Milap Chand* (3) and *Rahim Bakhsh v. Muhammad Hafiz* (4). I entirely agree with the view taken in these cases and think that they ought to be

(1) (1897) I. L. R., 19 All., 499.

(3) (1906) I. L. R., 28 All., 722.

(2) (1898) I. L. R., 21 All., 269.

(4) (1909) 10 Indian Cases, 319.

followed. I would allow the appeal and restore the decree of the court below.

BANERJI, J.—I am of the same opinion. I expressed my views on the point in the case of *Mangli Prasad v. Debi Din* (1). In the present case section 319 of the Code of Civil Procedure of 1882, applied, and therefore the formal possession which was delivered was in compliance with law. The nature of the property was such that actual possession could not be delivered in respect of it. Therefore from the date of the delivery of formal possession a fresh start for the computation of limitation was obtained by the auction-purchaser. I agree in the order proposed.

BY THE COURT.—We allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court with costs of both hearings in this Court.

Appeal decreed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

NANDI (PLAINTIFF) v. SARUP LAL AND ANOTHER (DEFENDANTS).*

Hindu Law—Hindu widow—Sale of husband's property by one of two widows—Right of succession of the other—Purchaser not entitled to refund of money spent on improvements.

A Hindu died leaving two widows. The widows, as a matter of convenience, divided the property of their deceased husband between them. One of the widows sold a house which had fallen to her share. She then died, and her co-widow sued to recover possession of the house. *Held* that the purchaser could not claim a refund of money spent in improving the property so purchased.

THE facts of this case were as follows :—

Musammat Nandi and Musammat Bakhti were co-widows. They partitioned their husband's property among themselves for separate enjoyment. A certain house fell to the share of Musammat Bakhti. She sold it to one Sarup Lal. On the death of Musammat Bakhti, Musammat Nandi brought a suit for recovery of possession of the house from Sarup Lal on the ground

1917

RAJENDRA
KISHORE
SINGH
v.
BHAGWAN
SINGH.

1917
March, 27

* First Appeal No. 162 of 1916, from an order of Banke Bihari Lal, District Judge of Meerut, dated the 18th of September, 1916.

(1) (1897) I. L. R., 19 All., 499.