

Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.

MAHARAJA OF JAIPUR AND ANOTHER (DEPENDANTS) v. SURJAN SINGH  
(PLAINTIFF).\*

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Act No. I of 1972 (Indian Evidence Act), section 116—Suit for possession of house—Claim by devisee of a third party as against ground landlord claiming by escheat—Estoppel.

A house standing within an area owned by J was occupied by a tenant, R, who paid rent to three persons successively, other than J. The last of these three persons on her death bequeathed the house to S, and about that time R vacated the house, which was then let to one A by J, who claimed that the house had escheated to him as the ground landlord :

Held, on suit brought by S for possession of the house, that R was an immaterial party, as he had vacated the house, and that there could be no question of estoppel as against either J or A, as neither of them claimed through R. *Tadman v. Henman* (1) referred to.

THE facts of this case were as follows :—

One Sukharaji, by caste a Thakurain, died possessed of a house situate within 35 acres of land in Katra, Allahabad, belonging to H. H. The Maharaja of Jaipur. On her death, Sukkho Nut took possession of the house without any right, as it appeared that there had been no deed of transfer from Sukharaji to Sukkho Nut. Before his death Sukkho Nut made a will devising the house in question to one Musammatt Raghunathi who was his mistress. Raghunathi, in her turn, bequeathed by a will, dated the 30th of January, 1915, the said house to one Surjan Singh. It appeared that the house was occupied by a tenant Ramji Sahai, who had been living in it from the time of Musammatt Sukharaji, but who had paid rent after Sukharaji's death to Sukkho Nut and, after him, to Raghunathi during her life-time. This tenant, after the death of Raghunathi, recognizing the paramount title of the Maharaja of Jaipur, attorned to him and paid rent to the servants of the Maharaja for such time as he continued to live in the house. On the 6th of October, 1916 he left the premises and on the 9th of October, 1916 Pandit Amar Nath was put in possession of the house as the tenant of the Maharaja Sahab by the latter's servants. Surjan Singh first brought a suit against Ramji Sahai alone after he had left the house and Pandit Amar Nath had occupied it, claiming rent for the period that he had been in occupation of the house since the death of Raghunathi. This suit was decreed. Subsequently Surjan Singh brought this suit for ejection and

\* Second Appeal No. 255 of 1921, from a decree of Gauri Shanker Tewari, Judge, Small Cause Court, exercising the powers of a Subordinate Judge of Allahabad, dated the 5th of April, 1921 reversing a decree of Shibendra Nath Banerji, Additional Munsif of Allahabad, dated the 20th of December, 1918.

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for mesne profits against Ramji Sahai and Pandit Amar Nath. The Maharaja Saheb of Jaipur was made a party to it, on his own application, by order of the court.

The court of the Additional Munsif dismissed the suit on the ground that Sukharaji's death having taken place within 12 years of the suit, and the possession of Sukkho Nut and those that followed him not having ripened into full ownership by 12 years' adverse possession, the plaintiff had failed to show any title in him. On appeal the learned Judge of the Small Cause Court exercising powers of a Subordinate Judge decreed the suit *in toto*, holding that though Ramji Sahai was let into possession of the house originally by Musammatt Sukharaji and though the title of the plaintiff was defective by reason of Sukharaji's death having taken place within 12 years of the suit, yet not only was Ramji Sahai estopped from denying the plaintiff's title as he had continued to pay rent to Sukkho Nut and Raghunathi with full knowledge of their defective title, but Pandit Amar Nath and the Maharaja, too, were estopped because they had come into possession of the house collusively through Ramji Sahai.

Hence this appeal.

Dr. S. M. Sulaiman (with him Pandit Jagjiwan Nath Takru and Munshi Sheo Prasad Sinha), for the appellants, contended that the lower appellate court was wrong in holding that the Maharaja and Amar Nath were estopped from denying the title of the plaintiff. Even Ramji Sahai would not be estopped from denying the plaintiff's title to whom he never paid any rent and who at best claimed only a derivative title by virtue of the will executed by Raghunathi in his favour. He referred to *Lal Mahomed v. Kallanus* (1).

Munshi Haribans Sahai, for the respondent, laid great stress on the finding of the lower appellate court that Amar Nath and the Maharaja had by colluding with Ramji Sahai taken possession of the house and, therefore, they were rightly held to be estopped: *Pasupati v. Narayan* (2).

[Dr. S. M. Sulaiman referred to *Annayyan v. Chinnan* (3)].

Munshi Haribans Sahai referred to *Girdhari Lal v. Kallu Mistri* (4).

(1) (1885) I. L. R., 11 Calc., 519.

(2) (1889) I. L. R., 13 Mad., 335.

(3) (1909) I. L. R., 33 Mad., 366.

(4) (1913) 11 A. L. J., 341.

Dr. S. M. Sulaiman was not called upon to reply.

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STUART and KANHAIYA LAL, JJ. :—The facts of the suit out of which this appeal arises can be stated very shortly as follows :—There is a small house in Katra, Allahabad City, standing within an area of 35 acres. This area is owned by His Highness the Maharaja of Jaipur. This small house was previously occupied by a woman called Musammat Sukharaji. She died about 1907. Before her death she had let the house to a man named Ramji Sahai. He continued to occupy it after her death. There was a man called Sukkhu Nut with whom Sukharaji had been living as his mistress. On her death, Ramji Sahai continued to pay rent to Sukkhu Nut. Then Sukkhu Nut died. After his death Ramji Sahai paid rent to Musammat Raghunathi, who was a subsequent mistress of Sukkhu Nut. When Musammat Raghunathi died she made a will in favour of a man called Surjan Singh, the plaintiff respondent in this appeal, by which she bequeathed him the house in question. We have it that Ramji Sahai vacated the premises on the 6th of October, 1916. Three days after he had vacated the premises, Pandit Amar Nath took possession of them under the permission of the Maharaja of Jaipur, who claimed the house as having escheated to him after the death of Sukharaji. Surjan Singh instituted the suit out of which this appeal arises for the ejection of Ramji Sahai and Pandit Amar Nath. The suit was instituted on the 14th of March, 1918 about eighteen months after Ramji Sahai had left the premises. The object, apparently, in including Ramji Sahai as a defendant when he palpably could not be ejected, was to raise a plea which has been decided in the plaintiff's favour by the lower appellate court. Pandit Amar Nath naturally put up the defence that he was holding with the permission of the Maharaja and, in consequence, the Maharaja was joined as a defendant. Ramji Sahai took no interest in the decision of the suit. He would not take any interest in it as he had left the premises. He contested the suit, but not seriously. The Maharaja of Jaipur and Pandit Amar Nath took as their defence the obvious defence as to the title of Surjan Singh. ~~The Maharaja~~ claimed by escheat but he was content to put the plaintiff to proof of his title. Then a plea was put forward that the Maharaja and Amar Nath could not question Surjan Singh's title under section 116 of the Indian Evidence Act. This plea of estoppel has found favour with the lower appellate

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court but it does not find favour with us. It is perfectly clear that neither the Maharaja nor Amar Nath was a tenant of the house in question, nor did they claim through Ramji Sahai who was the tenant; and, further, there was then no tenancy. There can be no estoppel against them. The learned Subordinate Judge has found collusion between Ramji Sahai and Amar Nath. On the facts as he has found, there was no collusion at all. In any circumstances, the ordinary doctrine which was laid down in *Tadman v. Henman* (1), that third persons not claiming possession of land under the tenant are not estopped, has application. The Maharaja and Amar Nath, who are the sole appellants in this case, have every right to put Surjan Singh to proof of his title. They put him to proof of his title in the court below and there can be no doubt as to the fact that he has been unable to establish any title. The question of the estoppel of Ramji Sahai is of no importance in the decision of this appeal, for he has not appealed. We, therefore, decree this appeal and direct that Surjan Singh's suit against His Highness the Maharaja of Jaipur and Pandit Amar Nath stand dismissed and we direct that Surjan Singh pay his own costs in this appeal and the costs of the Maharaja of Jaipur and Pandit Amar Nath in all courts.

*Appeal decreed.*

*Before Mr. Justice Stuart and Mr. Justice Kanhaiya Lal.*

MUHAMMAD SULTAN (DEFENDANT) v. SAKINA BIBI (PLAINTIFF) AND  
BAD-ULLAH (DEFENDANT).\*

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May, 12.

Act No. IV of 1882 (Transfer of Property Act), section 41—Ostensible owner—Manager left in charge of property the owner of which had gone on a pilgrimage.

Plaintiff, who was the owner of a house in Cawnpore, went on a pilgrimage to Mecca, leaving the house in charge of an agent. When the plaintiff had been absent about three years, the agent got his own name entered on the Municipal register in place of the owner, and thereafter sold the house as his own. Plaintiff returned before the expiration of six years from her departure and sued for recovery of possession:

*Held* that the vendor could not be considered as an "ostensible owner" within the meaning of section 41 of the Transfer of Property Act, 1882 and the plaintiff was entitled to a decree. *Jamna Das v. Uma Shankar* (2) *Merwanji Muncherji Car a v. The Secretary of State for India in Council* (3) and *Partap Chand v. Saiyida Bibi* (4) referred to.

\* Second Appeal No. 231 of 1921, from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 20th of December, 1920 reversing a decree of Kashi Prasad, Subordinate Judge of Cawnpore, dated the 13th of November, 1919.

(1) (1893) 2 Q. B., 168.

(2) (1914) I. L. R., 36 All., 308.

(3) (1915) 19 C. W. N., 1056.

(4) (1901) I. L. R., 23 All., 442.