

Before Mr. Justice Bennet and Mr. Justice Iqbal Ahmad.

KANHAIYA LAL (PLAINTIFF) v. GIRWAR AND OTHERS
(DEFENDANTS)*

1929
June, 28.

Act No. IX of 1908 (Limitation Act), articles 142 and 144—

Suit for possession of immovable property based on plaintiff's title—Burden of proof—Adverse possession.

The article of the Limitation Act applicable to a suit in which the plaintiff sues for possession of immovable property on the basis of his title is article 144, and if in such a suit the plaintiff proves his title he is entitled to a decree, unless the defendant succeeds in establishing his adverse possession for a period of more than twelve years. To cases in which the plaintiff claims relief on the basis of his title article 142 has no application. That article applies to suits in which the plaintiff claims possession of property on the ground that while in possession he was dispossessed or his possession was discontinued by the defendant. In other words that article is restricted to cases in which the relief for possession sought by the plaintiff is based on what may be styled as possessory title.

There may be cases in which the plaintiff sues for possession of immovable property both on the ground of title and on the ground of his possession having been disturbed by the defendant. In such cases, if he proves his title the burden of establishing title by adverse possession lies upon the defendant, and if the defendant succeeds in proving that fact the suit must fail, otherwise the plaintiff is entitled to a decree. To this extent article 144 will apply to such a suit. But it may be that the plaintiff, though not able to substantiate his title, is in a position to prove his possession and dispossession by the defendant within twelve years. If that be the case, article 142 will apply and the burden will be on the plaintiff. In short, suits for possession based both on the plaintiff's title and possessory title invite the application of articles 142 and 144, according to the varying circumstances of each case.

Second Appeal No. 904 of 1926, from a decree of Sheodarshan Dayal, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Agra, dated the 5th of February, 1926, confirming a decree of Y. S. Gahlaut, Munsif of Agra, dated the 31st of August, 1925.

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Secretary of State for India v. Chellikani Rama Rao (1), *Jai Chand Bahadur v. Girwar Singh* (2) and *Ali Hammad v. Ghurpattar Singh* (3), followed. *Sita Ram Dube v. Ram Sundar Prasad* (4) and *Kamakhya Narayan Singh v. Ram Raksha Singh* (5), distinguished.

Mr. *Shiam Krishna Dar*, for the appellant.

Mr. *Girdhari Lal Agarwala*, for the respondents.

BENNET and IQBAL AHMAD, JJ.—This appeal must be allowed. It is impossible to contest the proposition that the onus of establishing title by reason of possession for a certain requisite period lies upon the person asserting such possession. In other words, the burden of proving title by adverse possession lies upon the person claiming to have acquired title by such possession.

The findings of the lower appellate court in the present case are that the plaintiff's title to the property in dispute has been proved, and that the evidence of both parties as regards possession is worthless. On these findings, in our judgement, the plaintiff was entitled to a decree.

The article applicable to a suit in which the plaintiff sues for possession of immoveable property on the basis of his title is article 144 of the first schedule to the Limitation Act, and if in such a suit the plaintiff proves his title, he is entitled to a decree, unless the defendant succeeds in establishing his adverse possession for a period of more than twelve years. To cases in which the plaintiff claims relief on the basis of his title article 142 has no application. That article applies to suits in which the plaintiff claims possession of property on the ground that while in possession he was dispossessed, or his possession was discontinued, by the defendant. In other words that article is restricted to

(1) (1916) I. L. R., 39 Mad., 617. (2) (1919) I. L. R., 41 All., 669.

(3) (1924) I. L. R., 47 All., 389. (4) (1928) I. L. R., 50 All., 813.

(5) (1928) I. L. R., 7 Pat., 649.

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cases in which the relief for possession sought by the plaintiff is based on what may be styled as possessory title. Every person is entitled to have his peaceful possession protected and no one has a right to take the law in his own hands and disturb the peaceful possession of another. Possession is in itself title and good against every body except the true owner. In short, there may be cases in which a person, though not the true owner, has been in peaceful possession of property and his possession is disturbed. In such cases the person dispossessed has a right to claim to be restored back to possession on proving the fact of his possession and his dispossession or discontinuance of his possession by the defendant within a period of twelve years prior to the institution of the suit. To such cases article 142 applies, and the burden of proving the fact that the plaintiff was in possession and was dispossessed within twelve years of the date of the suit lies on the plaintiff and, on proving these facts, the plaintiff is entitled to a decree unless the defendant establishes that he is the true owner of the property in dispute.

Another class of cases are those in which the plaintiff sues for possession of immovable property both on the ground of his title and on the ground of his possession having been disturbed by the defendant. In such cases, if he proves his title the burden of establishing title by adverse possession for more than twelve years lies upon the defendant and if he succeeds in proving that fact the suit must fail, otherwise the plaintiff is entitled to a decree. To this extent article 144 will apply to such a suit. But it may be that the plaintiff, though not able to substantiate his title, is in a position to prove his possession and dispossession by defendant within twelve years. If that be the case, article 142 will apply and the burden will lie on the plaintiff. In short, suits for possession based both on the plaintiff's

title and possessory title invite the application of articles 142 and 144, according to the varying circumstances of each case.

The view that we take is in consonance with the view of their Lordships of the Judicial Committee in *Secretary of State for India v. Chellikani Rama Rao* (1), and the decisions of this Court in *Jai Chand Bahadur v. Girwar Singh* (2) and *Ali Hammad v. Ghurpattar Singh* (3).

The learned advocate for the respondent has placed reliance on the cases of *Sita Ram Dube v. Ram Sundar Prasad* (4) and *Kamakhya Narayan Singh v. Ram Raksha Singh* (5). In our opinion, neither of these cases have any bearing on the controversy before us. All that was decided in the case of *Sita Ram Dube v. Ram Sundar Prasad* (4) was that, where a purchaser in execution has obtained delivery of possession in accordance with law, that would, as between the parties to the proceedings for delivery of possession, give a new start for the computation of limitation and the auction-purchaser is entitled to a decree for possession provided he brings his claim within 12 years from the date of delivery of such possession. No one can controvert that proposition of law, but that proposition has no application to the facts of the present case. The case of *Kamakhya Narayan Singh v. Ram Raksha Singh* (5) also has no bearing on the question before us. In that case the claim of the plaintiff, whose predecessor in title had granted a lease, as against the assignee of the lessee was dismissed on the ground that no contract of tenancy between the lessor and the assignee of the lessee had been established and that the lessee had established his title by adverse possession for a period of more than

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(3) (1924) I. L. R., 47 All., 389. (4) (1928) I. L. R., 50 All., 815.

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twelve years. Similarly in the last case cited by the learned counsel for the respondent the claim of the plaintiff was dismissed as against the defendant on the ground that the plaintiff, having obtained a decree for possession against the defendant of that suit, had taken no step for a period of 12 years to enforce that decree and to obtain possession of the property. It is manifest that from the date of the decree for possession the possession of the defendant of that suit was in fact and in law adverse to the plaintiff of that suit and, as such, the view expressed by their Lordships of the Judicial Committee in that case in no way militates against the view taken by us in the present case.

For the reasons that we have given we allow this appeal, set aside the decrees of the courts below and decree the plaintiff's suit with costs in all courts.

Before Justice Sir Shah Muhammad Sulaiman and Mr.
Justice Pullan.

PUNJAB SUGAR MILLS Co. (DEFENDANT) v. LACHH-
MAN PRASAD (PLAINTIFF).*

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Act (Local) No. XI of 1922 (Agra Pre-emption Act), section 8 (c)—"Purposes of a manufacturing industry"—Cultivation of sugarcane is not a "purpose of a manufacturing industry"—Recital of purpose in the sale deed not necessary.

Purchase of land by a sugar manufacturing factory for the purpose of cultivation of sugarcane crops to be used as raw material for the factory is not a purchase "for the purposes of a manufacturing industry" within the meaning of section 8(c) of the Agra Pre-emption Act. Sugarcane growing is an agricultural pursuit quite separate and independent from the industry of manufacturing sugar. No doubt it is raw material required by a sugar factory, but the production of such raw material by agriculture is not part of the business of

*First Appeal No. 455 of 1926, from a decree of Kauleshar Nath Rai Subordinate Judge of Ghazipur, dated the 13th of September, 1926.