

1882
January 3.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Oldfield.

GOPAL DAS AND ANOTHER (PLAINTIFFS) v. THAN SINGH (DEFENDANT).*

Delivery of possession in execution of decree—Subsequent continuance in possession of judgment-debtor—Fresh suit for possession—Right to fresh execution of decree.

When formal possession of immoveable property has been delivered according to law to a person holding a decree for the delivery of the same, the subsequent continuance in actual possession of the judgment-debtor does not give the decree-holder a right to a fresh order for delivery of possession in execution of the decree, but gives him a right to institute a fresh suit for possession of such property.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Kashi Prasad* and *Babu Ram Das Chakarbaty*, for the appellants.

Munshi *Hanuman Prasad* and *Mir Zuhur Husain*, for the respondent.

The judgment of the Court (STRAIGHT, J., and OLDFIELD, J.,) was delivered by

STRAIGHT, J.—On the 15th February, 1877, the plaintiffs obtained a decree from the Munsif of Jalesar against the two defendants Pirthi and Murlī for possession of the land now in suit, also against Than Singh, the other defendant, respondent, for certain mesne profits in respect of such land. This decree was enforced in execution on the 23rd February, 1877, and under an order of the Munsif of that date directing that the decree-holders should be put in possession by ejecting the defendants, the plaintiffs obtained possession according to the law then in force, as appears from the report of the amin of the 7th March, 1877, to the effect that he had put the decree-holders into possession by dispossessing the defendants. Meanwhile the defendants had appealed to the Judge of Agra from the decision of the Munsif, and on the 6th June, 1877, the Subordinate Judge allowed the appeal on a preliminary point, and reversed the first Court's judgment. The

* Second Appeal, No. 1043 of 1880, from a decree of J. Alone, Esq., Judge of the Court of Small Causes at Agra, exercising the powers of a Subordinate Judge, dated the 10th June, 1880, modifying a decree of Maulvi Munir-ud-din, Munsif of Jalesar, dated the 4th December, 1879.

1872

 GOPAL DAS
 v.
 THAN SINGH.

decision of the Subordinate Judge was in turn appealed by the plaintiffs to this Court and with success, and the case was remanded back to the lower appellate Court for disposal on the merits. On the 10th May, 1878, the Subordinate Judge restored the Munsif's original decision of the 15th February, 1877, in favour of the plaintiffs, and a subsequent appeal against this decision by the defendants to this Court was dismissed. On the 23rd August, 1878, the plaintiffs applied in execution for possession of the land decreed, but on the 30th of the same month their application was refused, the Munsif holding that, as it appeared "that formerly formal possession was given through the Amin, no second order for possession could be given, and that, if the decree-holders had been dispossessed since getting possession, they could proceed according to law." The present suit, which is for possession and mesne profits, as also to set aside the miscellaneous order of the 30th August, 1878, was instituted on the 9th June, 1879. The Court of first instance decreed the claim for possession, but disallowed a portion of it as to mesne profits. The Subordinate Judge reversed the decision of the Munsif as to possession, but in other respects affirmed it. The plaintiffs now appeal to this Court, and the substantial point to be considered is, whether the present suit can be maintained, the contention of the respondent being that the question of possession having been determined in execution by the order of the 30th August, 1878, from which no appeal was preferred, the claim is barred. It is true that the plaint is not as artistically framed as it might have been, but looking at it in its entirety and placing a reasonable construction upon its language, we think it may be taken to allege that the plaintiffs-appellants, having once obtained possession in accordance with law under a decree of Court, have, by the subsequent continuance on, and cultivation of, the land in suit by the defendants-respondents, been dispossessed. Hence an adequate and legitimate cause of action. In our opinion the Munsif acted rightly in refusing to make any fresh order for possession, when he found upon the file the distinct acknowledgment by the plaintiffs-appellants that they had received possession on the 7th March, 1877, and that the case had been struck off in consequence of the decree being satisfied. It was vigorously argued before us that a dis-

1882

GOPAL DAS
 v.
 THAN SINGH.

inction should be drawn between merely formal and actual possession, and that no suit of the kind now before us can be brought, unless the party complaining has held tangible possession of land or premises, and been illegally ousted therefrom. It does not appear to us, however, that we are required to allow any such difference. Both Act VIII of 1859 and Act X of 1877 make distinct provision as to the mode in which possession is to be given to a successful decree-holder, or an auction-purchaser at sale in execution of decree, and we presume that in using the word "possession" some practical meaning was intended to be attached to the action of the Courts enforcing their own orders in execution. It is obvious that a possession, once obtained in accordance with the provisions of law, even though not actual, would stop the acquirement of hostile right by adverse possession for more than twelve years, and this principle seems to have been distinctly recognised in a Privy Council ruling in *Gunga Gobind Mundul v. Bhoopal Chunder Biswas* (1). If then possession accorded by the intervention of the Court is sufficient for the purpose of saving limitation, it may likewise be fairly regarded as adequate to supply the basis for a suit, in the event of subsequent dispossession or obstruction, after possession once obtained by operation of law. In the present case it is proved that the plaintiffs-appellants got possession on the 7th March, 1877, under the provisions of the law then in force, and it has been found as a fact that the two defendants Pirthi and Murli since then have cultivated the land now claimed, and that Than Singh, the other defendant, respondent, has received rent from them against the will of the plaintiffs-appellants. In our opinion these facts disclose a sufficient cause of action to justify the maintenance of the present suit, and we think that the Subordinate Judge took an erroneous view of the case. The appeal will therefore be decreed with costs, and the judgment of the Court of first instance be restored.

Appeal allowed.

(1) 2 Suth. P. C. C. 750.