

that the payments alleged were not genuine payments upon its merits, and has decided rightly upon its merits that these payments were genuine payments. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

1926

RAJA SHRI
PRAKASH
SINGH
v.
ALLAH-
ABAD BANK,
LIMITED,
LUCKNOW
BRANCH.

Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice Muhammad Raza.

BARJOR SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v.
SIDH NATH AND OTHERS (DEFENDANTS-RESPONDENTS).*

1926

October, 2.

Adverse possession, essential elements of.

Where the plaintiffs, who were the owners of the plots in suit, were dispossessed by the defendants and they brought a suit for recovery of possession within twelve years of the date of dispossession, *held*, that the defendants, in order to establish their title by adverse possession, ought to prove that their possession was actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation. It was not necessary for them to exercise overt acts of ownership as they were evidently in possession as owners. [L.L.R., 35 Cal., 96, followed.]

Mr. *St. G. Jackson*, for the appellant.

Mr. *Ishri Prasad*, for the respondent.

STUART, C. J., and RAZA, J.:—We are unable to agree with the view taken by the learned Judge of this Court who decided the appeal. Upon the facts it is clear to us that the plaintiffs-appellants have been dispossessed from the numbers in suit; but in no case did their dispossession take place at a period of more than twelve years before the date of suit. Up to that period they were clearly in constructive possession of

* Appeal No. 3 of 1926, under section 12(2) of the Oudh Courts Acts, from the decree of ASHWORTH, J., passed in Second Civil Appeal No. 339 of 1924, dated the 30th of January, 1926, setting aside the decree of Ganga Shanker, Subordinate Judge of Unao, dated the 10th of May, 1924 and upholding the decree of Partap Shanker, Munsif of Purwa, dated the 26th of May, 1923.

1928

BABJOR
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NATH.

the numbers as they had title thereto. It was not necessary for them to exercise overt acts of ownership. It is true that they might have done so had they desired, but they were, as owners, evidently in possession. Such being the case, they have a perfectly good title to succeed against persons who dispossessed them within less than twelve years of the date of suit. The position taken by the defendants-respondents in this case is insupportable in law. It was not sufficient for them to say that some acts of possession had been done. The possession required had to be adequate, in continuity, in publicity and in extent to show that it was adverse to the plaintiffs-appellants. It had to be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the Statute of Limitation. These latter words we have taken from the head-note in *Jogendra Nath Rai v. Baldeo Das* (1). In these circumstances we agree with the conclusions of the trial court and the lower appellate court and restore the decision of the trial court. The defendants-respondents will pay their own costs and those of the plaintiffs throughout.

Appeal allowed.

(1) (1908) I.L.R., 35 Cal., 98.