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cultivated since 1911. The commissioner found crops on plots 570 and 571, but that was in 1917; and there is nothing to show that the lands were cultivated or capable of producing any profit before that date. I think, in the circumstances, sufficient reason has not been shown for setting aside the learned Subordinate Judge's finding that the plaintiffs are not entitled to any compensation for this small area.

The result, therefore, is that the appeal and the cross-objection are both dismissed with costs.

Appeal and Cross-objection dismissed.

APPELLATE CIVIL.

Before Das and Ross, J.J.

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January 4.

KUMAR KAMAKSHYA NARAYAN SINGH

v.

SURAJNATH MISRA.*

Chota Nagpur Tenancy Act, 1908 (*Ben. Act VI of* 1908), *section* 14—"*successor*" *and* "*resumption*", *meaning of*—*limitation.*

The word "successor" in section 14 of the Chota Nagpur Tenancy Act, 1908, includes not only a successor *de jure* but also a successor *de facto*.

The word "resumption" in the same section means nothing more than an unequivocal demand for possession so as to operate as a final election by the landlord to re-enter. The institution of a suit for resumption amounts to such a demand.

The happening of an event which entitles the landlord to resume a tenure does not render it necessary for the tenure to be resumed by the landlord in order to prevent limitation running against him.

Appeal by the plaintiff.

This litigation was concerned with 7·68 acres and 8·57 acres of lands lying in *mauza* Chepa Kalan which

*Appeal from Appellate Decree No. 1469 of 1921, from a decision of H. Foster, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 6th May, 1921, confirming a decision of Maulavi Ali Karim, Munsif of Hazaribagh, dated the 25rd February, 1920.

admittedly was the *jagir* of one Brijbhukan and his male descendants. Brijbhukan was succeeded by his son Seodayal who died in 1859. Seodayal was succeeded by his widow Brijraj Kauri who, it appeared, was allowed to remain in possession of the whole *mauza* by the Ramgarh *raj* up to the time of her death, which occurred sometime in 1895. Upon her death one Udai Nath took possession of the *mauza*. In 1896 the *raj* instituted a suit for resumption of the *mauza* as against Udai Nath. It appears that Udai Nath died sometime in 1896 and the suit abated upon his death. Upon the death of Udai Nath his widow Ranjit Kuari took possession of the *mauza*. The *raj* instituted another suit against Ranjit Kuari, but it was dismissed on the ground that the previous suit having abated against her husband the *raj* was not competent to institute a suit against her. It appeared that upon the death of Ranjit Kuari a nephew of Udai Nath took possession of the village in 1907. The *raj* thereupon instituted a suit against Udai Nath's nephew and on the 12th January, 1914, it obtained a decree as against the defendant in that suit. On the 21st of June, 1915, the *raj* took possession of the *mauza*. The disputed lands have all along been in the possession of the defendants; and, having resumed what the *raj* claims to be a resumable tenure, the *raj* instituted a suit on the 20th of August, 1919, as against the defendants for *khas* possession of the disputed lands. The plaintiff's case was that an undertenure was created in favour of the defendants by either Brijbhukan or Seodayal and that upon the resumption of the tenure the undertenure came to an end and that the *raj* became entitled to recover possession of the disputed lands. The defendants' case was that the disputed lands were settled with them by the *raj* and that the settlement was confirmed by Udai Nath and that the defendants were the tenants of Udai Nath and that the suit against them was barred by limitation. Both the Courts dismissed the plaintiff's suit on the ground that it is barred by lapse of time. The only question in this appeal was whether,

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having regard to the lapse of time, the plaintiff was entitled to recover possession of the disputed lands.

Section 14 of the Chota Nagpur Tenancy Act, upon which the plaintiff relied, is as follows:

"Upon the resumption of a resumable tenure, every lien, subtenancy, easement or other right or interest created, without the consent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure or in limitation of his own interest therein, shall be deemed to be annulled."

Then certain exceptions follow which it is unnecessary to set out in the present report. The question of limitation arose in this way. The defendants asserted that the tenure itself came to an end certainly in 1895 if not in 1859 and that the *raj* became entitled to resume this resumable tenure certainly in 1895 if not in 1859, and they said that they had been in possession without any title whatever certainly since 1895 and had acquired a title by lapse of time. The plaintiff on the other hand asserted, that though he may have been entitled to resume the tenure in 1895—he altogether denied that having regard to the compromise he was entitled to resume the tenure in 1859—time as against the defendants did not begin to run until the actual resumption of the resumable tenure by the *raj*, which event, according to the plaintiff, happened on the 21st of June, 1915; and he contended that no question of limitation arose as he brought the suit within twelve years from the date of the actual resumption of the resumable tenure. The trial Court dismissed the suit and an appeal from that decision was also dismissed. The plaintiff appealed to the High Court.

Sultan Ahmed, for the appellant.

Bankim Chandra De, for the respondents.

DAS, J. (after stating the facts, as set out above, proceeded as follows):—

Two questions arise upon the arguments that have been advanced by the parties; first, what meaning are we to attach to the word "resumption" occurring in section 14 of the Chota Nagpur Tenancy Act; and,

secondly, whether it can be said that an interest was created in favour of the defendants by the grantee of the tenure or any of the successors of the grantee.

The second question is a short one and may be disposed of at once. The defendants themselves rely upon a title created in their favour by Udai Nath. Udai Nath was undoubtedly in possession of the tenure and in his view rightfully in possession thereof. The defendants have all along claimed that they were in possession of a sub-tenancy properly created in their favour by Udai Nath who, according to them, was the successor of the original grantee. This being the case of the defendants, they ought not to complain if they are not put in a better position than if they were what they pretend. In my opinion, the word "successor" in section 14 of the Act means not only a successor *de jure* but also a successor *de facto*. That being so, I must hold, upon the case of the defendants themselves, that an interest was created in their favour by the successor in interest of the original grantee and section 14 of the Chota Nagpur Tenancy Act will apply provided the suit has been brought within time.

This brings me to the question of limitation; and the decision of this question must depend upon the meaning of the word "resumption" in section 14 of the Chota Nagpur Tenancy Act. The extreme argument on behalf of the plaintiff is that resumption means actual re-entry upon the tenure and that as re-entry took place on the 21st June, 1915, his suit brought on the 20th August, 1919, is well within time. The extreme argument on behalf of the defendants is that "resumption" means the happening of an event entitling the landlord to resume the tenure and the contention is that as that event happened in 1895, the suit is clearly barred by limitation. I am unable to accept the extreme contention put forward on behalf of the defendants. In my opinion resumption means an entry upon the land; and the problem for our investigation is whether re-entry is equivalent to actual

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physical possession of the land. An alternative argument was suggested by Mr. *B. C. De* and it is this: that re-entry is equivalent to institution of proceedings with a view to resume the land and he contends that as the suit for resumption was brought in 1896, time began to run in favour of the defendants from that year. In my opinion this argument is entitled to succeed. As I understand the position, resumption is nothing more than an unequivocal demand for possession so as to operate as a final election by the landlord to re-enter. Although the event which entitled the plaintiff to resume the tenure had happened, it was not obligatory on the plaintiff to resume the tenure. He might indeed have resumed it or have made a fresh grant to the person actually in possession of the tenure or have allowed the defendants to remain in possession of the disputed lands paying a rent for the same to him. It was, therefore, necessary for the plaintiff to resume the tenure before he could be heard to say that the interest of the defendants has been annulled. Until the final election to resume the tenure was made, the defendants were entitled to say that they were in possession of an interest in the disputed lands by virtue of a transaction created in their favour by one against whom no action had been taken by the plaintiff and as such they were entitled to remain in possession of that interest. I think, therefore, that resumption means an unequivocal demand for possession which operates as a final election by the landlord to re-enter upon the land. This unequivocal demand for possession took place in 1896 and operated, in my opinion, as a resumption of the tenure. The present suit having been brought more than twelve years from the date of the unequivocal demand for possession, is clearly barred by limitation.

I would dismiss this appeal with costs.

ROSS, J.—I agree.

Appeal dismissed.