

of opinion that so far as this Court is concerned it is now settled that in the case of damage claimed for non-delivery of a consignment no notice is necessary under section 77 of the Indian Railways Act. Having regard to the consensus of opinion of seven Judges of this Court it does not appear necessary to refer the question to a Full Bench.

The result is that the decision of the learned District Judge will be set aside and that of the Munsif restored partially with costs. The Bengal and North-Western Railway Company was also impleaded as respondent in this appeal but the appeal is not pressed against that Company and it will be dismissed as against that Company with costs so far as this Court is concerned. The appeal will be decreed as against the Great Indian Peninsular Railway Company and the decree will be limited to Rs. 909-6-0 the amount at which this appeal has been valued, with proportionate costs as against the Great Indian Peninsular Railway Company in all Courts.

MACPHERSON, J.—I agree.

*Appeal decreed.*

S. A. K.

---

## APPELLATE CIVIL.

---

*Before Das and Adami, JJ.*

THAKUR BAGESWARI CHARAN SINGH

*v.*

THAKURAIN JAGARNATH KUARI.\*

*Chota Nagpur Encumbered Estates Act, 1876 (Beng. Act VI of 1876), section 12A—Release of estate—payment by proprietors—subsequent suit by donor's successor for recovery of possession—limitation.*

---

\*Appeal from Original Decree no. 158 of 1926, from a decision of Babu Ashutosh Mukharji, Subordinate Judge of Hazaribagh, dated the 26th April, 1926.

1928.

JAIRAM  
RAMREKH  
DAS  
*c.*  
GREAT  
INDIAN  
PENINSULAR  
RAILWAY.

KULWANT  
SAHAY, J.

1929.

*Jan., 9.*

1929.

THAKUR  
BAGESWARICHARAN  
SINGH

v.

THAKURAIN  
JAGANNATH  
KUMAR.

A gift of a portion of an estate in contravention of section 12A (1) (a) of the Chota Nagpur Encumbered Estates Act, 1876, is void ab initio and not merely from the death of the donor, and the possession of the donee is adverse to the proprietor of the estate from the date of the alienation.

*Adam Umar Sale v. Bapu Barwaji* (1), applied. *Bai Dala v. Parag Khushal* (2), distinguished.

Possession which starts under a mere claim or colour of title, and which is therefore adverse, cannot by virtue of subsequent events become permissive.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Das, J.

*S. M. Mullick* (with him *A. B. Mukharji* and *S. S. Bose*), for the appellant.

*L. P. E. Pugh* (with him *B. C. De* and *Bindheswari Prasad*), for the respondent.

DAS, J.—In this suit the plaintiff who is the proprietor of the Dharguli Estate in the district of Hazaribagh claims to recover the disputed properties. The suit is resisted by the defendants on the ground that her husband, the late proprietor of Dharguli Estate made a gift of these properties to her on the 16th June 1909. The learned Subordinate Judge has dismissed the plaintiff's suit and the plaintiff appeals to this Court.

The husband of the defendant was Jado Charan Singh who at all material dates was the proprietor of Dharguli Estate. The plaintiff is the grandson of Jado Charan, his father who was the eldest son of Jado Charan having predeceased the latter. It appears that in 1894 the Dharguli Estate was attached under the provisions of the Encumbered Estates Act. The estate was released on the 15th May 1909, and on the 16th June, 1909, Jado Charan made a grant in favour of his wife, defendant no. 1, which is the subject of controversy between the parties in this

(1) (1909) I L. R. 33 Bom. 116.

(2) (1902) 4 Bom. L. R. 797.

litigation. Jado Charan died on the 21st February, 1924, his eldest son, the plaintiff's father having died on the 30th January, 1920. The estate was again attached under the provisions of the Encumbered Estates Act and the present suit was instituted by the plaintiff on the 24th February, 1925. The plaintiff's case in the plaint is that the transaction of the 16th June, 1909, was a benami transaction and that the object was to save certain properties for the grantor as he was heavily involved in debts. This defence failed in the Court below and Mr. S. M. Mullick appearing on behalf of the plaintiff-appellant does not challenge the finding of the learned Subordinate Judge on this point. The alternative case put forward in the court below was to the effect that the gift in question was in contravention of section 12A of the Encumbered Estates Act and was therefore void. The learned Subordinate Judge has had no difficulty in giving effect to this argument; but he has held that although the grant was void, the defendant was in possession under the void grant for over twelve years and therefore acquired a title by adverse possession. Mr. S. M. Mullick invites us to consider the effect of section 12A of the Encumbered Act; and he contends, first, that the alienation in question became void only on the death of Jado Charan which took place on the 21st February, 1924; secondly, that under section 12A not only is the title under the void document void but also the title that has been acquired by lapse of time; thirdly, he contends that there was in fact no adverse possession, but that the possession of the defendant was throughout permissive; and, lastly, he contends that limitation is saved under section 19 of the Limitation Act as a result of the petition which was filed to the Commissioner on the 4th March, 1916. In my opinion there is no merit in any of these arguments.

Section 12A provides as follows :

" (1) When the possession and enjoyment of property is restored under the circumstances mentioned in the first or the third clause

1929.

THAKUR  
BAGESWARI  
CHARAN  
SINGH  
v.  
THAKURAIN  
JAGANNATH  
KUARI.

DAS, J.

1920. of section 12, to the person who was the holder of such property when the application under section 2 was made, such person shall not be competent without the previous sanction of the Commissioner,—
- THAKUR  
PAGESWARI  
CHARAN  
SINGH  
v.  
THAKURAIN  
JAGANNATH  
KUMAR.
- (a) to alienate such property, or any part thereof, in any way, or  
(b) to create any charge thereon extending beyond his lifetime.
- (2) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final.
- DAS, J. (3) Every alienation and charge made or attempted in contravention of sub-section (1) shall be void."

Mr. Pugh does not dispute the proposition that the transaction of the 16th of June, 1909, contravenes the provisions of section 12A and must therefore be regarded as void; but he contends that possession under a void grant must be regarded as adverse possession and he insists that the defendant having been in possession for over twelve years from the date she took possession, must be regarded as having acquired title under the statute of limitation. Now Mr. S. M. Mullick contends that the transaction becomes void not from the date of the grant but from the date of the death of the grantor. The argument is founded on clause (1), paragraph (b), of section 12A which forbids "the holder of such property to create any charge thereon extending beyond his lifetime". It is contended on paragraph (b) that a charge is perfectly valid for the lifetime of the holder of the property; and that therefore the alienation in paragraph (a) must also be regarded as a good alienation for the lifetime of the holder of the property. It is impossible to give effect to the argument. The section speaks for itself; and it is perfectly clear that it provides that the alienation is void from the moment of such alienation although it suggests that a charge may be good for the lifetime of the holder of the property.

It was then contended that section 12A in effect provides that the alienee cannot acquire a title under the statute of limitation. The argument assumes

that the Act expressly or by necessary implication abrogates the statute of limitation and it is impossible to find any support from that argument in the Act itself. A decision of Sir Lawrence Jenkins in *Bai Dala v. Parag Khushal* (1) was relied upon; but that was an entirely different case. In that case the plaintiffs sued to recover possession of certain fields alleging that they purchased the entire bhag from the owner thereof. The defence was that the fields were of bhagdari tenure and constituted only a portion of the bhag and that, as a consequence, the plaintiffs' title was defective. It was found as a fact that the plaintiffs had purchased only a portion of the bhag and it was admitted that the title as based upon the purchase was bad. But the plaintiffs relied on the fact that they had been in adverse possession of what was sold to them for over twelve years and they contended that they had acquired a complete title under the provisions of section 28 of the Limitation Act. It appears, however, that the Collector, under the provisions of section 3 of the Bhagdari Act summarily removed the plaintiffs and the whole argument before the Bombay High Court was whether the Collector could exercise the right under section 3 of the Bhagdari Act after the plaintiffs had acquired a complete title by lapse of time. In dealing with this point, Sir Lawrence Jenkins said as follows: "It is also provided that it shall be lawful for the Collector, or other Chief Revenue Officer of the district, whenever he shall upon due enquiry find that any person or persons is or are in possession of any bhag or share in any bhagdari or narwadari village other than a recognised subdivision of such bhag or share in violation of any of the provisions of this section, to summarily remove him or them from such possession and restore possession to the person or persons whom the Collector shall deem entitled thereto, and any suit brought to try the validity of any order or orders which the Collector may make in such matter must be brought within three calendar months after the execution of such order or orders".

1929.

---

 THAKUR  
 BAGESWARI  
 CHARAN  
 SINGH

 v.  
 THAKURAIN  
 JAGANNATH  
 KUMAR.

DIS. J.

(1) (1902) 4 Bom. L. R. 797.

1929. Having considered the section upon which the defendants relied, his Lordship proceeded to say as follows: "It seems to us from the words of the section that the Collector, whenever he shall find any person in possession may pass such order, as he has passed in this case, and the statute of limitation does not prevent his so doing." Now there is no similar provision in the Chota Nagpur Encumbered Estates Act and it therefore seems to me that the case upon which Mr. S. M. Mullick relies is not applicable to the facts of this case. But the identical point was decided by Batchelor, J., in *Adam Umar Sale v. Bapu Baraji* (1). It was pointed out that possession acquired under an alienation made in contravention of section 3 of the Bhagdari Act can become adverse so as to bar a suit for recovery by the individual alienor or his representatives in interest; and that the Bhagdari Act contains nothing which by express provision or necessary implication abrogates the law of limitation in favour of a private person. The previous decision of the Bombay High Court in *Bai Dala v. Parag Khushal* (2) was cited before His Lordship; but His Lordship distinguished the case on the ground that in the case before him no action had as a matter of fact been taken by the Collector. In my opinion it is impossible to argue that a title acquired by lapse of time should under the Chota Nagpur Encumbered Estates Act be regarded as void since as I have already said there is nothing in the Act to suggest that it expressly or by necessary implication abrogates the law of limitation.

It was then contended that there is in this case no adverse possession since the grantor and the grantee were colluding with each other and since the possession of the grantee must in the circumstances of the case be regarded as permissive. It is doubtful whether we have any case of adverse possession to try because it would appear that the case falls within Article 142 of the Limitation Act which provides for a suit for

(1) (1909) I. L. R. 33 Bom. 116.

(2) (1902) 4 Bom. L. R. 797.

possession of immovable properties when the plaintiff, while in possession of the properties has been dispossessed or has discontinued the possession. Discontinuance means that the person in possession goes out and is followed in possession by other persons. But Mr. S. M. Mullick argues before us that going out as a result of a document is not discontinuance of possession within the meaning of Article 142 of the Limitation Act. It is not necessary for me to come to any decision on this point, for I am satisfied that even if we are to proceed upon Article 144 of the Limitation Act upon which he relies, it must be held that the defendant has been in adverse possession of the disputed properties for over twelve years. Now as I understand the law, adverse possession denotes possession under a claim or colour of title. Now in this case the defendant entered upon possession by virtue of a document which had been executed by her husband in her favour. She entered upon possession by virtue of that document and continued to be in possession on the strength of that document. It may be that the title as based upon the document itself is void under section 12A of the Encumbered Estates Act, but her possession nevertheless was under a claim or colour of title and must accordingly be regarded as adverse. Mr. S. M. Mullick then contends that whatever the position may have been prior to the 4th March, 1916, the position materially changed on that date as a result of certain petitions which were filed before the Commissioner both by Jado Charan and by defendant no. 1. It appears that on that date two petitions were filed before the Commissioner of Chota Nagpur, one on behalf of Jado Charan and the other on behalf of his wife, the defendant in this action. Now Jado Charan in his petition stated that he had made a grant in favour of his wife and he insisted that he was entitled under the law to make a grant for the provision of his wife and that such a grant was outside the operation of section 12A of the Encumbered Estates Act; but he stated that as doubt had arisen as to the validity of the grant as a result

1929.

THAKUR  
BAGESWARCHARAN  
SINGH

v.

THAKURAIN  
JAGANNATH  
KURL.

DAS, J.

1929.

THAKUR  
BAGESWARI  
CHARAN  
SINGH  
v.

THAKURAIN  
JAGANNATH  
KUMAR.

DAS, J.

of the section to which I have already referred, it was necessary that permission should be accorded by the Commissioner so that no doubt might be left as to the validity of the grant. In the result he made the following prayers :

" (1) That if section 12A of Act III of 1909 does not apply to the grants mentioned above (copies of which are filed for your honour's perusal) your honour may be pleased to declare that such sanction is not necessary.

(2) That if a sanction is necessary your honour may be pleased to accord your honour's sanction to the same.

(3) That should your honour think that the execution of fresh deeds after your honour's sanction is necessary, your honour may be pleased to sanction the grants taking the deeds filed as drafts, so that your petitioners may execute fresh grants according to the said drafts.

(4) That such alterations in the drafts as your honour may be pleased to order may be made.

(5) That your honour may be pleased to pass such other order or orders as may validate the grants and give effect to the intentions of the parties according to law."

The petition of the defendant was a short one and may be quoted in full. It was as follows :

" That in view of the petition filed by Thakur Jadc Charan Singh your petitioners beg to file original deed of gift and prays that your honour may be pleased to sanction the same or order a fresh grant on the same terms to be executed. And for this your petitioners as bound shall ever pray."

Upon these petitions an order was passed by the Commissioner on the 26th April, 1916. That order runs as follows :

" The petitioner's (no. 1) estate was released from management under the Encumbered Estates Act on 15th May, 1909, and a month after its release the petitioner on 16th June, 1909, made a grant of a portion of the estate to his second wife and subsequently on the 17th November, 1909, of another portion to his third son. Under section 12A of Act VI of 1876 the proprietor was not competent, without the previous sanction of the Commissioner to alienate such property or any part thereof in any way. He now applies after seven years for the Commissioner's sanction to his alienation so as to make it valid. The Deputy Commissioner reports that 'it is probable that the proposed alienation is not approved by the eldest son, and it is also probable that it is against the family custom. I decline to accord permission under section 12A to the alienations which were made without permission seven years ago immediately on the release of the estates."

It was contended by Mr. S. M. Mullick that whatever may have been the position before, there was no pretence on the part of the defendant after the 4th



March, 1916, or at any rate after the order of the Commissioner on the 26th April 1916, to hold the property under a claim or colour of title; and that therefore her possession after the 26th April must be regarded as a permissive possession. I am unable to agree with this contention. To start with, it is difficult to understand how a possession which starts under a claim or colour of title and therefore adverse can by virtue of subsequent events become a permissive one. In the next place, I do not regard the petitions of the 4th March, 1916, as constituting an admission either on the part of the donor or on the part of the donee that the grant of the 16th June, 1909 was void and inoperative in law. The defendant continued to be in possession and I must hold that she continued to be in possession under a claim or colour of title. It was contended that her possession could not be regarded as hostile; but her possession was in denial of the title of the rightful owner and in that sense was undoubtedly hostile. In my view it is impossible to contend that the possession of the defendant was in any sense permissive.

It was lastly contended that limitation is saved under section 19 of the Limitation Act. No doubt any acknowledgment of the title of the rightful owner will attract the operation of section 19 of the Limitation Act and will save limitation and it is well settled that any form of acknowledgment will be sufficient if from it an admission may be implied that the person to whom it is given is the owner of the land. Mr. Sushil Madhab Mullick relies upon the petition of the defendant filed before the Commissioner on the 4th March, 1916. I have already dealt with the petition; and I do not agree with the argument that it contains an admission of the title of Jado Singh. In my opinion section 19 has no operation to the facts of this case.

I must dismiss this appeal with costs.

ADAMI, J.—I agree.

*Appeal dismissed.*

1920.

THAKUR  
BAGESHWARI  
CHARAN  
SINGH  
v.

THAKURAIN  
JAGANNATH  
KUARI.

DAS, J.