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mortgagee.' So it is obvious that the ground of the decision in *Gobinda Nath Shaha Chowdhury v. Surja Kanta Lahiri* (1) is that the plaintiffs were claiming through the dispossessed putnidar and darputnidar. In my opinion the view taken in the Bombay case which I have just referred to ought to be followed by us.

I would therefore allow the appeal, set aside the judgment and the decree passed by the Court below and give the plaintiffs a decree in terms of prayer (a) in the plaint. They will be entitled to their costs throughout.

JAMES, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

MUNI LAL JHA

v.

NATH SAHAY SINGH.*

Limitation—Bengal Tenancy Act, 1885, Schedule III, article 3—dispossession of the plaintiff or of a person through whom he claims—Hindu widow, dispossession of—reversioner, suit by—article 3, applicability of—Limitation Act, 1908 (Act IX of 1908), Schedule I, article 141, whether applicable.

Article 3, Schedule III, Bengal Tenancy Act, 1885, provides for a suit to recover possession of land claimed by the plaintiff as a raiyat or an under-raiyat and the period of limitation is two years from the date of dispossession.

*Second Appeal no. 908 of 1926, from a decision of Babu Kamala Prasad, Subordinate Judge, 1st Court, Muzaffarpur, dated the 31st March, 1926, affirming a decision of M. Kabiruddin Ahmad, Additional Munsif of Muzaffarpur, dated the 13th August, 1925.

(1) (1899) I. L. R. 26 Cal. 460.

Held, that the word, "dispossession" in article 3 refers to the dispossession of the plaintiff or of a person through whom the plaintiff claims.

Therefore, a suit by a Hindu reversioner for possession of raiyati land on the death of the widow who was dispossessed by the landlord is not governed by Article 3.

Held, further, that such a suit is governed by Article 141, Limitation Act, 1908, and the period of limitation is twelve years from the death of the widow.

Musammat Gaggo Bai v. Utsava Lal (1) and *Runchordas Vandravandas v. Parvatibai* (2), followed.

Deo Narayan Sahu v. Ramanand Sahu (3), not followed.

Vaithialinga Mudaliar v. Srirangath Anni (4), referred to.

Appeal by the plaintiff.

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

B. P. Varma, for the appellant.

K. Husnain, Syed Izhar Hussain and J. P. Sinha, for the respondents.

KULWANT SAHAY, J.—This is an appeal by the plaintiff and it arises out of a suit for possession of 12 kathas of land which formed part of an occupancy holding of one Hukum Jha. Hukum Jha died leaving a widow, Lalitman, who remained in possession of Hukum Jha's property for life. She died in 1920, and the plaintiff claims as one of the reversionary heirs of Hukum Jha. The plaintiff's case is that he and his two brothers took possession of all the properties of Hukum Jha on the death of Lalitman, that there was a partition amongst the plaintiff and his brothers, and that by that partition the disputed

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(1) (1929) 33 Cal. W. N. 809, P. C.

(2) (1899) I. L. R. 23 Bom. 725, P. C.

(3) (1921) 63 Ind.Cas. 211.

(4) (1925) I. L. R. 48 Mad. 893, P. C.

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12 kathas of land fell to the share of the plaintiff. His case is that he was dispossessed from this 12 kathas of land by the defendant no. 1 who is a thicadar of the village holding under the proprietor. The dispossession was alleged to have taken place in November, 1923. The material defence of the defendant no. 1, who was the real contesting defendant in the suit with which we are concerned in the present appeal was that the suit was barred by limitation both under the Indian Limitation Act and also by the special limitation under the Bengal Tenancy Act. His case was that Lalitman, the widow, had been dispossessed more than twelve years before the suit and that, therefore, the claim of the plaintiff was barred. The Munsif held that the plaintiff's suit was barred by twelve years' limitation and also by two years' limitation under the Bengal Tenancy Act. The learned Subordinate Judge has found that the Article of the Indian Limitation Act applicable to the present case was Article 141 and that the plaintiff's suit would be within the period of limitation as it was instituted within twelve years from the death of the widow; but he held that Article 141 would apply provided Article 3 of Schedule III of the Bengal Tenancy Act did not apply. He was of opinion that Article 3 of Schedule III of the Bengal Tenancy Act did apply, and as he found that Lalitman had been dispossessed at least in 1912, if not earlier, and that since then Lalitman or the plaintiff had never been in possession of the holding, the suit was barred under Article 3, and he accordingly dismissed the suit.

The sole question for consideration in the present appeal, therefore, is whether the suit is barred by Article 3, Schedule III, Bengal Tenancy Act. There is no question as regards the title of the plaintiff inasmuch as the learned Subordinate Judge has found that he is the reversionary heir of Hukum Jha and he has title to the property in dispute.

Article 3, Schedule III, Bengal Tenancy Act, provides for a suit to recover possession of land claimed by the plaintiff as a raiyat or an under-raiyat, and the period of limitation is two years from the date of dispossession. The learned Subordinate Judge holds that

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" in a case like the present where a Hindu widow who was in possession of her husband's estate which comprised a holding was dispossessed therefrom by the landlord, that dispossession would avail as against the reversioner, and therefore the dispossession in this Article may refer to the dispossession of Musammat Lalitman."

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I am of opinion that the word dispossession in Article 3, Schedule III of the Bengal Tenancy Act must refer to the dispossession of the plaintiff or of a person through whom the plaintiff claims. In the present case the dispossession was of a Hindu widow and the plaintiff does not claim through that widow. The plaintiff claims through the last male owner, namely, the husband of the widow, and the dispossession of the widow cannot affect the right of the plaintiff. Article 3 does not, in my opinion, in any way control the provision of Article 141 of the Schedule to the Indian Limitation Act which provides for a suit for possession of immoveable property on the death of a Hindu or Muhammadan female, for which the period of limitation is twelve years from the date when the female dies. In the latest Privy Council decision in *Musammat Gaggo Bai v. Utsava Lal* (1) it has been held that the reversionary heir is entitled under Article 141 of the Indian Limitation Act to twelve years from the widow's death for a suit to recover possession of immoveable property where there has been no decree against the Hindu widow or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession of the property on the widow's death, and that adverse possession for over twelve years against the widow is not such an act as affects the reversioner's right. It is true that the

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special limitation under Article 3, Schedule III of the Bengal Tenancy Act was not under consideration in that case; but the law laid down therein is applicable and the position of the landlord who remains in possession of a holding on dispossessing a Hindu widow is no better than that of a person claiming the holding by right of adverse possession. It was held in *Runchordas Vandravandas v. Parvatibai* ⁽¹⁾ that section 28 of the Indian Limitation Act as to the extinction of a right by the effect of limitation running against the widow would not be applicable to the reversioner whose right was not derived from or through the widow but was derived through her husband on the death of the widow. In *Musammatt Gaggo Bai v. Utsava Lal* ⁽²⁾ just referred to, it was held by their Lordships of the Privy Council that the subsequent decision of the Judicial Committee in *Vaithialinga Mudaliar v. Srirangath Anni* ⁽³⁾ was not in conflict with the decision of the Judicial Committee in *Runchordas Vandravandas v. Parvatibai* ⁽¹⁾. As I have observed above, Article 3, Schedule III of the Bengal Tenancy Act refers to the dispossession of the plaintiff, or of a person through whom the plaintiff claims. In the present case the plaintiff does not claim through Lalitman who was the person dispossessed by the landlord and, therefore, Article 3 does not apply to the present case.

Reference has been made by the learned Advocate for the respondents to *Deo Narayan Sahu v. Ramnand Sahu* ⁽⁴⁾ where it was held by a single Judge of this Court that in the case of abandonment of a holding by a Hindu widow the special period of limitation provided by Article 3, Schedule III of the Bengal Tenancy Act would apply to a suit by a Hindu reversioner after the death of the widow; but in view

(1) (1899) I. L. R. 23 Bom. 725, P. C.

(2) (1929) 33 Cal. W. N. 809, P. C.

(3) (1925) I. L. R. 48 Mad. 885, P. C.

(4) (1921) 63 Ind. Cas. 211.

of the latest pronouncement of the Judicial Committee of the Privy Council in *Musammatt Gaggio Bai v. Utsava Lal* (1) it is clear that this view cannot be supported. The learned Subordinate Judge has held that if Article 3 of Schedule III of the Bengal Tenancy Act does not apply, then the suit is not barred by limitation as it was brought within twelve years of the death of the widow under Article 141 of the Indian Limitation Act.

The result, therefore, is that the decision of the learned Subordinate Judge will be set aside and the suit will be decreed with costs throughout.

MACPHERSON, J.—I agree.

Appeal allowed.

CRIMINAL REFERENCE.

Before Terrell, C.J. and Rowland, J.

BENGALI PARIDA

v.

BANCHHANIDHI PANIGRAHI.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 145 and 146—Proceedings initiated on police report—written statements filed—no evidence adduced—attachment of subject-matter of dispute.

Where a magistrate initiates proceedings under section 145 of the Code of Criminal Procedure, on the strength of a police report, and both parties filed written statements but neither party adduced evidence, although given an opportunity to do so, and the magistrate was unable to determine who was in possession when the proceedings were initiated, he is entitled to attach the subject-matter of the dispute under section 146.

*Criminal Reference no. 38 of 1929, made by D. E. Reuben, Esq., I.C.S., Sessions Judge of Cuttack, in his letter no. 779-Cr., dated the 16th May, 1929.

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