

APPELLATE CIVIL.

Before Das and James, JJ.

DUBRAJ MAHTO

v.

LALJI SAHAI.*

Adverse possession—possessory mortgage—trespasser obtaining possession adversely against mortgagee, whether can affect the rights of the mortgagor.

In the case of a possessory mortgage where possession has been delivered to the mortgagee, a trespasser obtaining possession may hold adversely to the mortgagee but not to the mortgagor.

Tarabai v. Dattaram (1), followed.

Gobind Nath Sahu Chowdhury v. Surja Kanta Lahiri (2), distinguished.

Appeal by the plaintiffs.

S. P. Asthana, for the appellants.

Chowdhury Mathura Prosad, for the respondent.

DAS, J.—The learned Judicial Commissioner has decided in accordance with the Madras view because in his opinion the order of remand suggested that the Madras view should be accepted. I have considered the matter carefully; and in my opinion, we ought to follow the view which has throughout been accepted, in Calcutta, in Bombay, and in many cases in Allahabad. The point is put very clearly in the judgment of Macleod, C.J., in *Tarabai v Dattaram* (1). He held in effect that in the case of possessory mortgage where possession has been delivered to the

*Appeal from Appellate Decree no. 287 of 1927, from a decision of F. G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 9th November, 1926, confirming a decision of Babu Kshetra Nath Singh, Munsif of Ranchi, dated the 21st November, 1922.

(1) (1924) I. L. R. 49 Bom. 539.

(2) (1899) I. L. R. 26 Cal. 460.

mortgagee, a trespasser obtaining possession may hold adversely to the mortgagee but not to the mortgagor. In my opinion, the conclusion at which the learned Chief Justice has arrived, is founded on principle and is covered by authorities.

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It was contended that the Calcutta High Court took a different view in *Gobind Nath Shaha Chowdhury v. Surja Kanta Lahiri* (1). In that case the land in dispute together with other lands were let out in putni and darputni by the predecessor-in-interest of the plaintiffs. During the continuance of the said lease the land in dispute was taken possession of and held adversely by the defendants or their predecessor. The putni and darputni were relinquished by the putnidar and darputnidar in favour of the plaintiffs on the 29th June, 1891, and they, on the 28th June, 1893, brought a suit for recovery of possession of the disputed land from the defendants. The defence was that the suit was barred by limitation. It was held that as there was a relinquishment by the dispossessed putnidar and darputnidar in favour of the plaintiffs, the plaintiffs claimed title through the putnidar and the darputnidar, and that as the claim of the putnidar and the darputnidar was bound to fail on the terms of Article 144 of the Limitation Act, so the claim of the plaintiffs must fail. The attention of the learned Judges was drawn to the decision in *Chinto v. Janki* (2). In dealing with that case, their Lordships pointed out as follows: "The case of *Chinto v. Janki* (2) was one of the mortgagor suing for redemption. The plea of limitation was there urged by a person who had taken adverse possession as against the mortgagee whilst the mortgaged property was in the possession of the mortgagee; and it was held that such adverse possession could not affect the right of the mortgagor to redeem, he not claiming through the

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

(2) (1892) I. L. R. 18 Bom. 51.

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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.