Counsel then questions the propriety of the sentences. But the Judge in passing sentence upon the appellant after conviction was clearly right in giving no weight to whatever doubts he personally entertained as to the propriety of the verdict of the jury or mitigating the sentence on that account. Having accepted the verdict he was bound to award punishment as if he agreed with the verdict and he has done so and has assessed the term of imprisonment on entirely sount consiterations. The sentence passed is in my opinion not excessive in the district of Shahabad for a midnight dacoity in a bazar by a gang of forty or fifty persons armed with lathis.

I would accordingly dismiss this appeal.

ALLANSON, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Ross, JJ.

PRINCE RANJIT SINGH

v.

JHORI SINGH.*

1928.

November, 1.

Ejectment—defendant, failure of, to establish better title—plaintiff entitled to succeed, if previous possession proved.

In a suit for ejectment, although the plaintiff may not be able to establish any title in himself, he is entitled to succeed if he can prove that he was in possession of the property in dispute until he was forcibly ousted by the defendant, provided the defendant does not establish a better title in himself.

*Appeal from Appellate Decree no. 1248 of 1926, from a decision of M. Saiyid Hasan, Subordinate Judge of Ranchi, dated the 31st of May, 1926, reversing a decision of Babu Narendra Nath Banerji, Munsif of Giridih, dated the 12th of March, 1925.

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Premraj Bhavaniram v. *Narayan Shivaram Khisti*(1), *Hanmantrav* v. *The Secretary of State for India*(2), *Shama Soonduree Debia* v. *The Collector of Maldah*(3), and *Bodha Genderi* v. *Ashloke Singh*(4), followed.

Ram Chandra Sil v. *Ramanmani Dasi*(5), not followed.

Appeal by the defendants.

In this suit the plaintiff claimed to recover possession of a mining property known as Chaili Pahari. He based his title on a conveyance of the 17th of May, 1918, executed in his favour by one Barho Rai who appeared to be a khorposhdar of the Tikait of Doranda. It was not disputed that the transaction of the 17th of May, 1918, conveyed to the plaintiff a $2\frac{1}{2}$-pies share in mauza Maheshmarwa. The plaintiff claimed to have been in possession of the disputed property from the 15th of January, 1921, up to the 16th of March, 1921. It appeared that he did not work the mine from the 16th of March, 1921; but he contended that he commenced to work the mine again from the 25th of May 1924, and continued to work it up to the 6th of September 1924 when he was forcibly dispossessed by the defendants with the help of the police. It appeared that the defendants succeeded in satisfying the Magistrate in a proceeding under section 145 of the Code of Criminal Procedure that they were in possession of the disputed property; but it was not disputed that the plaintiff was not a party in that proceeding.

The defendants based their title on a conveyance of the 31st of May, 1913, executed in favour of Chagan Lal Nagar by Chirangi Rai who appeared to have been another of the khorposhdars of the Tikait of Doranda. By the transaction of the 31st of May, 1913, a 16-annas interest in the entire mauza was transferred to Chagan Lal Nagar, although it was admitted that Chirangi Rai had no more than

(1) (1882) I. L. R. 6 Bom. 216.
(2) (1901) I. L. R. 25 Bom. 287.
(3) (1869) 12 W. R. 164.
(4) (1926) I. L. R. 5 Pat. 765
(5) (1915-16) 20 Cal. W. N. 773.

10-annas 8-pies interest there. The Court of first instance found in favour of the defendants and dismissed the plaintiff's suit. The Judge in the Court of appeal below reversed the decision of the Court of first instance and gave the plaintiff a decree substantially as claimed by him.

C. C. Das (with him *G. C. Mukherji*), for the appellants.

K. B. Dutt (with him *B. C. De*), for the respondent.

DAS, J. (after stating the facts set out above, proceeded as follows): The first point taken by Mr. C. C. Das on behalf of the defendant-appellants is that the plaintiff has no title whatever to the disputed property and that his action must fail. The contention is founded on the admitted fact that the conveyance in favour of the plaintiff was executed by one who was admittedly a khorposhdar of the Tikait of Doranda. Mr. Das argues that it is well understood that a khorposhdar has no under-ground rights whatever and that therefore the plaintiff has not acquired any under-ground rights although he may have acquired certain rights to the surface with which we are not concerned in this litigation. The argument as formulated by Mr. C. C. Das cannot be accepted, for I know of no law which lays down that a khorposhdar cannot acquire by express grant a right to the minerals. It is quite true that a grant without express words will not convey the under-ground rights to a khorposhdar; but we have no evidence in this case as to whether the grant in favour of Barho Rai included the mineral rights or not. It is, however, not necessary to found my decision on this view of the law, for in my view the plaintiff is entitled to succeed in this action provided he establishes that he was in peaceful possession of the disputed property prior to the forcible dispossession of the 6th of September, 1924, and provided the defendants have not succeeded in establishing a title to the disputed property.

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Mr. C. C. Das relies upon the well-known doctrine that a person suing in ejectment can only recover by the strength of his own title and not by the weakness in the title of the adversary. That proposition may be accepted as well-founded; but possession is prima facie proof of title; and it is well established that previous possession is a good foundation for a suit in ejectment, although the plaintiff who instituted the suit may not be able to establish any title in himself, provided (and this is an important provision) that the defendant does not establish a better title to the disputed property. In support of this proposition I may refer to the decision of Sir Michael Roberts Westropp in *Premraj Bhavaniram* v. *Narayan Shivaram Khisti*(1). In that case the learned Chief Justice of the Bombay High Court laid down that possession is a good title against all persons except the rightful owner, and entitles the possessor to maintain ejectment against any other person than such owner who dispossessed him. This decision was followed by Sir Lawrence Jenkins in *Hanmantrav* v. *The Secretary of State for India*(2). In the course of his decision Sir Lawrence Jenkins refers to a judgment of Mitter, J., in *Shama Soonduree Debia* v. *The Collector of Maldah*(3) where the following principles were enunciated by that very distinguished Judge: "If the plaintiff can prove that she was in possession of the property in dispute until she was ousted by the defendant against her consent, and without the intervention of a Court of law, the defendant ought to be called upon to prove his title. If the defendant succeeds in proving his title, the plaintiff ought then to be required to prove a better one. That evidence of possession, however short, is evidence of title, is an undisputed proposition of law, and it therefore follows that such evidence is at least sufficient to make out a prima facie case in favour of the party by whom

(1) (1882) I. L. R. 6 Bom. 216. (2) (1901) I. L. R. 25 Bom. 287.
(3) (1869) 12 W. R. 164.

it is given ". Mr. Das referred to the decision of Woodroffe and Mokerjee, JJ. in *Ram Chandra Sil* v. *Ramanmani Dasi*(1); but the point that was really established in that case is that a plaintiff in an ejectment suit can only succeed by the strength of his own title. I do not read the judgment of Woodroffe, J. as going beyond this Mookerjee, J. no doubt says as follows in the course of his judgment: "The plaintiff can, consequently, succeed only upon proof of title and not merely by proof of possession. It is well-settled in this Court, by decisions which are binding upon us, that mere previous possession will not entitle a plaintiff to a decree for recovery of possession except in a suit under section 9 of the Specific Relief Act." With all respect to that very distinguished Judge, I do not think that the proposition is very correctly laid down in this passage. I have already referred to the judgment of Mitter, J. in *Shama Soonduree* v. *Collector of Maldah*(2) which certainly lays down a proposition different from that which is accepted by Mookerjee, J. in the case to which I have just referred and which, by the way, is not referred to in the judgment of Mookerjee, J. It is also worthy of note that the decisions of the Bombay High Court by the very distinguished Chief Justices of that Court are also not referred to in the course of the judgment of Mookerjee, J. The view which has found favour in the Bombay High Court has been accepted as well-founded by the Chief Justice of this Court in *Bodha Ganderi* v. *Ashloke Singh*(3). The learned Chief Justice held that, "Where a person who has been in possession of property for several years without title is dispossessed by another, who also has no title, the former is entitled to be restored to possession". That this proposition is not in conflict with the other proposition which is equally well-established, namely, that the plaintiff in an ejectment

(1) (1915-16) 20 Cal. W. N. 773. (2) (1869) 12 W. R. 164.

(3) (1926) I. L. R. 5 Pat. 765.

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suit can only succeed by the strength of his own title, is apparent if reference is made to section 110 of the Evidence Act which provides:

> "When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

Now how does the position stand on section 110 of the Evidence Act? The plaintiff brings a suit in ejectment. It is quite true that he can only succeed by the strength of his own title. He satisfies the Court of facts that he was in possession of the disputed property before he was forcibly dispossessed. Section 110 assures that he must be taken to be the owner till the contrary is established. It follows therefore that if the case attracts the operation of section 110 of the Evidence Act the onus must be upon the defendant to show that the plaintiff who has proved that he was in possession before his forcible dispossession is not entitled to the disputed property.

Then the question is, has the plaintiff satisfied the Court of facts that he was in possession of the disputed property prior to the 6th of September, 1924? The Courts of fact have differed in their view of the evidence; but we are conclusively bound by the view of the lower Appellate Court on a question of this nature. Mr. Das contended before us that the judgment of the learned Subordinate Judge on this question is not in accordance with law and that he has not considered many important matters which were considered by the Court of first instance It is impossible for us to say, that because the learned Judge has not referred to all the evidence in the case, he has not considered all that evidence. I find it impossible to accede to the argument of Mr. Das that we should regard the judgment of the lower appellate Court as one which is not in accordance with law. I hold therefore that the finding of the learned Subordinate Judge that the plaintiff was in possession of the disputed property on the 6th

of September 1924, and that he was forcibly dispossessed on that date is binding on us in second appeal.

The question then arises: Have the defendants shown by the evidence which they have adduced either that the plaintiff has no title to the disputed property or that they have a better title? Now they have certainly not shown that the plaintiff has no title. All that Mr. Das contends in this connection is that the plaintiff's grantor being a khorposhdar, it must follow as a matter of law that the plaintiff has no title to the under-ground rights; but, as I have said, this contention is not well-founded. So far as the title of the defendants is concerned, it is admitted that the documents stand in the name of Chagan Lal Nagar and the learned Judge in the Court of appeal says as follows:

"There is hardly any evidence worth the name to show how the defendant acquired any right from Chagan Lal Nagar, the lessee under Exhibit A. The defendant has therefore no locus standi to oppose the plaintiff's case."

Even if we should ignore this finding of fact, it does not follow that the defendants have a better title to the disputed property. The plaintiff is in possession of a certain mine known as Chaili Pahari. Chagan Lal Nagar no doubt obtained a conveyance of a 10-annas 8-pies share in the mauza, but it has not been established by the defendants that this mine Chaili Pahari is included within the 10-annas 8-pies share which belonged to Chirangi Rai and which he conveyed to Chagan Lal Nagar. It follows therefore that the defendants have not established a better title to the disputed property.

In my opinion, upon the findings of fact at which the learned Judge has arrived, this appeal must fail and must therefore be dismissed with costs.

ROSS, J.—I agree.

Appeal dismissed.