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ROSS, J.

lieu thereof there will be a decree declaring that the true effect of the deeds mentioned in the plaint is to charge the property of the settlor with the service of the deities therein named and that the deeds do not effect a dedication of the property. The plaintiffs are entitled to their costs of both Courts; but in view of the nature of the litigation and of the absence of any personal interest in the defendants in defending the suit, the costs will come out of the estate and not from the defendants personally.

DHAVLE, J.—I agree.

Appeal allowed.

PRIVY COUNCIL.

J. C.*
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Nov. 24.

On Appeal from the High Court at Patna.

NAGESHWAR BUX ROY

v.

BENGAL COAL COMPANY, LIMITED.

Limitation—Minerals—Adverse Possession—Mokarraridar of Village working Minerals—Constructive Possession as to whole Village—Limitation Act (IX of 1908), *Schedule I, article* 144.

As a general rule where title is founded on adverse possession the title will be limited to that area of which actual possession has been enjoyed. But the extent of possession enjoyed may be an inference of fact, and in applying the rule to the case of a mineral field regard is to be had to the nature of the subject and the possession to which it is susceptible.

A coal company, who held a mokarrari lease of a village of 1,342 acres, and believed that they were entitled to the subjacent minerals, openly carried on for twelve years mining operations in various parts of the village by working pits and making trial bore-holes; it was not clear whether any one pit had been worked continually for twelve years. The

* *Present:* Lord Atkin, Lord Macmillan, and Sir John Wallis.

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zamindar sued the coal company claiming the minerals under the village.

Held, that the suit was barred by the Limitation Act, 1908, Sch. 1, art. 144, as the company had been in adverse possession of the minerals under the whole village for more than twelve years; if art. 142 applied, the evidence showed a dispossession of the plaintiff.

Glyn v. *Howell*(1), distinguished.

Decree of the High Court affirmed.

Appeal (no. 101 of 1926) from a decree of the High Court (June 11, 1925) reversing a decree of the Special Subordinate Judge of Daltonganj (July, 21, 1921).

The suit was brought in 1919 by the proprietor of the Bisrampur estate in the district of Palamau, who had since died and was now represented by the appellant as manager of the encumbered estate on behalf of his son, against the respondents, for a declaration of title to the coal under the village of Rajhara in that estate. The respondent coal company by their written statements claimed in effect that they and their co-defendants were proprietors both of the surface and underground rights in the village; further, that the suit was barred by limitation.

The material facts appear from the judgment of the Judicial Committee.

The High Court (Das and Adami, JJ.), reversing the decision of the trial judge dismissed the suit, holding that it was barred by limitation. Other points arose in the case, but they are not material to the present report.

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July, 18, 22, 24, 25.

Upjohn, *K. C.*, *E. B. Raikes*, *K. C.* and *Jardine* for the appellant: The High Court was wrong in holding that the coal company had a title by adverse possession to the whole coalfield. A title by adverse possession is good only as to so much of the property in suit as the defendant actually possessed for the

(1) (1909) 1 Ch. 666.

required period. The possession must be such as would support an action of ejectment. No presumption extending the actual possession can be made in favour of a trespasser, even if he believed that he had a title to the subject-matter. Those propositions have been applied frequently to cases as to mineral rights: *Glyn* v. *Howell*(1), *Low Moor Co.* v. *Stanley Coal Co.*(2), *Ashton* v. *Stock*(3), *Thompson* v. *Hickman*(4), *McDonnell* v. *McKinty*(5). So far as *Pramatha Nath Malia* v. *Meik*(6) held otherwise it was wrongly decided. There was no continuous working of the coalfield as a whole. Two or three pits were sunk at certain points; they were not continuously worked, except possibly pit no. 3, for twelve years. [Reference was made also to *Jones* v. *Williams*(7), *Taylor* v. *Parry*(8), *Thew* v. *Wingate*(9).]

If article 142 applies no question as to the onus of proof arises now as the evidence is before the Board and it does not show a dispossession of the plaintiff as to the subject-matter of the suit.

Dunne, K. C. and *G. D. McNair* for the respondent Company: Upon the evidence the Company acquired a good title to the whole coalfield by adverse possession. In *Satya Niranjan Chakravarti* v. *Ram Lal Kaviraj*(10), the Board held in similar circumstances that the suit was barred as to the minerals under the whole village; the defendants there had a good title to the surface and had worked the coal at certain points. That there may, in certain circumstances, be a constructive possession of the whole of

(1) (1909) 1 Ch. 666.
(2) (1876) 34 L. T. N. S. 186.
(3) (1877) 6 Ch. D. 719.
(4) (1907) 1 Ch. 550.
(5) (1847) 10 Ir. L. R. 514.
(6) (1920) 5 Pat. L. J. 273.
(7) (1837) 2 M. & W. 326; 150 E. R. 781.
(8) (1840) 1 M. & G. 604; 133 E. R. 474.
(9) (1862) 38 L. J. Q. B. 310n.
(10) (1924) I. L. R. 3 Pat. 183; L. R. 52 I. A. 109.

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a mineral area although working has been confined to certain parts is shown by cases referred to for the appellant. Here there was an undisputed title to the surface, and the company believed that it had a title to the minerals; until the decision in *Hari Narayan Singh* v. *Sriram Chakravarti*(1) it was supposed that an istimrari mokarrari grant carried the minerals. That there had never been any separation of the title to the minerals strongly supports the inference that the workings were acts of possession as to the whole field: *Lord Advocate* v. *Wemyss*(2). The evidence shows that the company since 1865 had openly worked the coal, and sunk trial bore holes, where it pleased. Further they paid rent to the zamindar who must have known of the working. If article 142 applies, the evidence equally shows a dispossession of the plaintiff more than twelve years before the suit.

Upjohn, K. C., replied.

Nov. 24.—The judgment of their Lordships was delivered by—

LORD MACMILLAN.—The subject-matter of dispute in this appeal is the right to the minerals and particularly the coal lying under the village of Rajhara. The plaintiff, now the appellant, claims that these minerals belong to him in virtue of his proprietorship of the Bisrampur Estate, within which the village of Rajhara lies, and in his plaint prays for a declaration to that effect.

It appears that by *sanad* dated the 21st February, 1789, an ancestor and predecessor in title of the plaintiff granted the village on *jamabrit* tenure to Pande Shiva Ram and Pande Shankar Ram. The successors of the latter in turn granted in 1855 a *mukarrari patta* or lease of the village to the secretary of the Bengal Coal Company, Limited, on behalf of that company with an express right to work the

(1) (1910) I. L. R. 10 Cal. 723; L. R. 37 I. A. 136.
(2) (1900) A. C. 48, 68.

underlying coal. The suit is directed against the Coal Company and the present representatives of the grantees under the *sanad* of 1789 who are also the representatives of the grantors of the lease of 1855 in the company's favour.

So far as the lease of 1855 is concerned, its validity as a title to the mineral rights in question depends upon the title of the lessors to grant these rights. The sole title of the lessors consisted of the *jamabrit* grant of 1789. Now it is well settled that in the case of such a grant nothing short of express words will convey the mineral rights, and the *sanad* of 1789 contains no express grant of the minerals. It therefore conferred no mineral rights on the grantees, and this, indeed, appears to have been conceded by the defendants in the High Court. It follows that the grantors of the lease of 1855, having themselves no title to the mineral rights in the village, were not *in titulo* to let them to the Bengal Coal Company. Both the Subordinate Judge and on appeal the High Court of Judicature at Patna have accordingly held that the defence fails, so far as founded on the lease of 1855 taken by itself—that lease, as regards the mineral rights, having been granted *a non dominis*. With this conclusion their Lordships agree.

But the defence contained a challenge of the title of the plaintiff himself to the ownership of the minerals, and thus attacked the plaintiff's title to sue for the declaration which he asked. The precise ground of this attack was not specified in the defendants' pleadings, but, despite the plaintiff's protests, was developed in the course of the proceedings and the topic was fully investigated both by the Subordinate Judge and by the High Court. The former held that the attack failed while the latter held that it succeeded. As will appear, their Lordships do not find it necessary to examine this aspect of the case and need only mention that in the view of

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the High Court the title to the mineral rights in question was at least till 1895, and probably still is, vested in the Government. Consequently when the present appeal was partly opened before their Lordships on the 26th February, 1929, attention was drawn to the fact that the Government was not a party to the case and was not represented although important questions possibly affecting the title of the Government to minerals in India generally were raised. The appeal was therefore directed to stand over in order that its dependence might be intimated to the Secretary of State for India. In reply to their Lordships' communication, the Secretary of State has intimated that the Government of India does not propose to intervene in the appeal, and the case having again been set down for hearing, their Lordships now proceed to dispose of it.

Without expressing any opinion as to the soundness of the contrary view taken by the High Court, their Lordships propose to assume that the plaintiff's title embraced the mineral rights in question and to consider what has become the main issue in the case as argued before them, namely, whether the plea of the Bengal Coal Company that they have acquired a title to the minerals under the Indian Limitation Act is well-founded. The plea was rejected by the Subordinate Judge but sustained as an alternative ground of judgment by the High Court. It is plain that if this contention of the Company is made out there is an end of the case.

Under the Indian Limitation Act, 1908 (no. IX of 1908), it is provided that every suit for possession of immovable property of which the plaintiff while in possession of the property has been dispossessed or has discontinued possession shall be dismissed if instituted after a period of twelve years from the date of dispossession or discontinuance of possession (sections 3 and 28 and the First Schedule, art. 142). It is also provided that every suit for possession of

immoveable property or "any interest therein not hereby otherwise specially provided for" if instituted after a period of twelve years from the time when the possession of the defendant becomes adverse to the plaintiff shall be dismissed (*Ibid.* art. 144).

The Courts below appear to have treated the present case as raising an issue of adverse possession under article 144 rather than of dispossession under article 142. In the result the distinction is here probably not material as adverse possession by the defendant may and in the present instance does imply dispossession of the plaintiff.

The present suit was instituted in 1919 and the question, therefore, is whether the defendant company have established dispossession of the plaintiff for a period of twelve years preceding 1919. They will have established this if they can show that they have for such period been in possession to the exclusion of or adverse to the plaintiff.

"On the evidence," says Adami J., "I find that the defendant company were in possession of Rajhara and were working the colliery by raising coal to a greater or less degree all through the years 1901 to 1912 and that it is not proved that at any time in 1912 the work was stopped by a notice from the plaintiffs nor was the colliery abandoned. Therefore even if the plaintiffs had proprietary rights in the minerals during the period the defendants were in adverse possession for 12 years and would gain title."

The evidence as to the mining activities of the company in Rajhara was subjected to a minute and critical examination by Mr. Upjohn on behalf of the appellant. He emphasised the absence of records of continuous working for twelve years of the three pits which were in existence in Rajhara in 1901, and finally maintained that in any event, if it should be held that as regards one of the pits there had been adverse possession for twelve years, the company thereby acquired right only to the particular area of coal of which it was in actual physical possession for the requisite period and no more, and this at most was the small area worked by no. 3 pit. Such possession,

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he contended, could not be held to confer a right to the minerals under the whole village which comprised some 1,342 acres.

Now there is undoubted authority for the proposition that where a person without any colour of right wrongfully takes possession as a trespasser of the property of another, any title which he may acquire by adverse possession will be strictly limited to what he has actually so possessed. The maxim *tantum prescriptum quantum possessum* is rigorously applied to him. And it has been held in the case of mines that there is no presumption in law that the possession of a part of a seam infers possession of the whole seam, much less of all the seams in the mineral field in which part of a seam has been worked. On the other hand, possession is a question of fact and the extent of the possession may be an inference of fact. [*Low Moor Co.* v. *Stanley Coal Co.*(1): *McDonnell* v. *McKinty*(2); and *Ashton* v. *Stock*(3)].

In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field: it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial. The real question is what in fact has been possessed.

In the present case the village of Rajhara has always been treated as a unit of property and the minerals underlying it constitute a defined unit as much as the surface overlying them. The existence of coal under the village has long been known, as the granting of the invalid lease of the minerals in 1855

(1) (1876) 34 L. T. N. S. 186.
(2) (1847) 10 Ir. L. R. 514.
(3) (1877) 6 Ch. D. 719.

to a coal company itself evidences, and workings have been intermittently carried on in the area for a very long period. The Revenue Survey map of 1865-66 shows two shafts in Rajhara. According to the District Gazetteer systematic operations were begun by the company at Rajhara in 1901, and although it appears that these systematic operations referred also to workings in an adjoining colliery the Subordinate Judge is satisfied that they included two pits in Rajhara itself. The workings have been commonly described as a colliery, a comprehensive term which includes both the worked and the as yet unworked minerals within a defined area. It was of the colliery in this sense that the company claim to have been in possession. The actings of the coal company have throughout, indeed, been consistent only with the assertion of a right to the minerals under the whole village to which they thought they had right. They openly sank at least three pits at different points, two of them being half a mile distant from the third. They selected the places at their own discretion, brought the requisite plant on to the ground and erected bungalows for their mining employees. Mr. Evans who was resident assistant manager of the colliery at Rajhara from 1907-08 to 1913 himself made bores in the mineral field during his time. It is nothing to the purpose that the company may not have worked any one pit for twelve years continuously if for twelve years they have carried on operations in various parts of the mineral field. The fact that one pit in a mineral field is discontinued and another opened in a different part of the field and that bores are sunk in likely places is excellent proof of possession of the whole area. There was no concealment on the part of the company; they behaved openly as persons in possession not of one pit, but of the mineral field underlying the village as a whole, and as entitled to sink pits anywhere in the village they chose. All this they did without any challenge from the plaintiff or his predecessors, and in the *bona fide*

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belief that their lease entitled them to work the minerals anywhere in the area let.

The case of *Glyn* v. *Howell*(1), is distinguishable. There the operations of the trespasser had been confined to a single area of two acres and he had made no attempt to work any other part of the field. Here the operations of the company were only consistent with their being, as they conceived, in possession of the whole minerals under the village as they were in law in legitimate possession of the whole surface. The plaintiff received rent from the company for the village as a whole and the receipt of this rent from a company with so significant a name as the Bengal Coal Company, which was actually carrying on mining operations at various points in the village, is indicative of recognition of their possession of the underlying minerals as well as of the surface.

Their Lordships are not at all disposed to negative or to weaken the principle that as a general rule where title is founded on an adverse possession the title will be limited to that area of which actual possession has been enjoyed. But the application of this general rule must depend upon the facts of the particular case and in the present instance their Lordships, having regard to the whole circumstances and without pursuing further the details of the evidence so closely analysed both in the High Court and again at their Lordships' bar, find themselves in agreement with the view expressed by Adami J., in the passage above quoted, and are of opinion that the possession had by the company for a period of at least twelve years during their occupation was effective possession not only of the surface of the village but of the whole mineral field underlying it, and that for such period the plaintiff has been dispossessed of the whole mineral field. Their Lordships will therefore humbly advise His Majesty that the appeal be dismissed with costs.

(1) (1909) 1 Ch. 666.

Solicitors for appellant: *Watkins and Hunter.*

Solicitors for respondent company: *Lee Sanderson and Co.*

LETTERS PATENT.

Before Terrell, C. J. and Adami, J.

KAILASH RAI

v.

MUSAMMAT JAGA KUER.*

1930.

Oct. 30.
Nov. 26.

Mortgage—suit for redemption—denial of mortgage in defence—specific terms of mortgage not proved—finding that mortgaged property belonged to plaintiff and that defendants held as mortgagees—defendants, failure of, to prove title otherwise—plaintiff, whether entitled to decree for redemption on facts found.

The plaintiff brought a suit in which she sought to redeem two mortgages which she alleged had been executed by her husband in favour of the father of the defendant no. 1 some 30 or 32 years before the institution of the suit. It was alleged that under these mortgages the defendants were in possession of the fruit trees standing on three separate plots of land. The amount alleged to have been advanced was in one case Rs. 35 and in the other Rs. 15. The defendants denied the mortgages and asserted that their remote ancestor had planted the trees on the ghairmazrua land of the landlord with the landlord's permission, and that their family had been in possession ever since.

The plaintiff was unable to produce a copy of the mortgage deeds from the Registration office as the documents did not require registration. She, therefore, sought to prove the transactions by the secondary evidence of witnesses who stated that they were present at the execution and attested the deeds.

* Letters Patent Appeal no. 24 of 1930, from a decision of the Hon'ble Mr. Justice R. L. Ross, dated the 21st January, 1930.