APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Candy.

1900. *March* 28.

CHANDRI (ORIGINAL PLAINTIFF), APPELLANT, *v.* DAJI BHAU (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), *Sch. II, Arts.* 139 *and* 141—*Landlord and tenant—Rent-note—Expiration of the term—Tenant holding over—Tenancy at sufferance—Want of privity between landlord and tenant—Suit to recover possession—Limitation.*

A tenant holding over after the expiration of the term mentioned in his rent-note is a tenant by sufferance and there is no such relationship between the landlord and such tenant as is contemplated by article 139, Schedule II of the Limitation Act (XV of 1877). A tenant by sufferance is only in by the laches of the owner, so that there is no privity between them.

CANDY, J.:—The possession of a tenant holding over is wrongful, and if there is no evidence from which a fresh tenancy can be inferred in the strict sense of that term, time begins to run against the landlord when the period of the fixed lease expires.

SECOND appeal from the decision of Ráo Bahádur R. R. Gangolli, Additional First Class Subordinate Judge of Thána, with appellate powers, reversing the decree of Ráo Sáheb H. V. Kane, Acting Subordinate Judge of Alibág.

The plaintiff sued the defendants (Suit No. 159 of 1895) to recover possession of the house in dispute, alleging that the defendants had on the 25th June, 1877, passed a rent-note for one year to her deceased mother to whom she had succeeded as heir, and that after the expiration of the term the defendants continued to live in the house as monthly tenants. The defendants contended that the suit was time-barred. The Subordinate Judge decreed that possession of the house should be restored to the plaintiff. The defendants preferred an appeal to the District Judge, and while the appeal was pending, the plaintiff executed the decree and took possession of the house. Subsequently the decree was reversed in appeal on the preliminary ground that the plaintiff had not given to the defendants notice to quit. The plaintiff thereupon having given the requisite notice, brought the present suit in the year 1897 for a declaration of her title to

* Second Appeal, No. 697 of 1899.

the house and for an injunction restraining the defendants from taking possession from her.

The defendants answered (*inter alia*) that the plaintiff was not the owner of the house and that the suit was time-barred.

The Subordinate Judge found that the defendants entered on the premises as tenants of plaintiff's mother under the rent-note dated the 25th June, 1877; that though the rent-note contained a period of one year only, still as the defendants originally came in as tenants they were estopped from denying the title of the plaintiff who represented her mother, and that the suit was not time-barred though it was not brought within twelve years after the expiration of the tenancy. He, therefore, allowed the claim.

On appeal by defendant No. 1 the Judge reversed the decree and rejected the claim, holding that the defendants were, after the expiration of the term mentioned in the rent-note, tenants by sufferance, and that as there was no reliable evidence in the case to show that a fresh relation of landlord and tenant was created between the parties at any time since the year 1878, the defendants' possession was adverse and, therefore, the suit was time-barred.

The plaintiff preferred a second appeal.

Daji A. Khare, for the appellant (plaintiff) :—We are already in possession, and in the present suit we merely seek a declaration and an injunction; consequently, the suit cannot be time-barred.

[JENKINS, C. J. :—But you obtained possession in execution of a decree which was subsequently found to be wrong in law and reversed. Therefore the relief which you now claim is tantamount to possession.]

The Judge has, in support of his decision, relied on *Kantheppa* v. *Sheshappa*[1]. But the remarks made therein are merely *obiter dicta*. The present case is governed by *Krisknaji* v. *Antaji*[2]. Although the tenancy created under the lease came to an end when the stipulated period of one year expired, still the tenancy was not determined. Article 139, Schedule II of the Limitation

(1) (1897) 22 Bom., 893. (2) (1893) 18 Bom., 256.

1900.

CHANDRI v. DAJI BHAU.

Act applies to a tenancy which is determined. The defendants continued to be our tenants by sufferance and they ought to have shown that they held adversely for more than twelve years. The burden of proof lay on them—*Adimulam* v. *Pir Ravuthan*[1]. Unless a tenant clearly shows when his holding became adverse, his mere holding over after the expiration of the stipulated term cannot make his possession adverse to his landlord.

[CANDY, J.:—If the tenant holds over for one hundred years, can the landlord recover the property ?]

We submit that article 144, Schedule II of the Limitation Act applies to such a case, and the tenant ought to show that his possession was adverse. After the expiration of the fixed period, a new relationship comes into existence.

[JENKINS, C. J.:—But article 144 applies when no other article applies.]

According to our contention article 139 is not applicable because it relates to a tenancy which is determined by act of parties. It would apply when the tenant holds over and does some thing which determines the tenancy, as by attornment to a third person, or when the landlord determines it by giving a notice to quit.

G. K. Dandekar, for the respondent (defendant No. 1):—The ruling in *Kantheppa* v. *Sheshappa*[2] fully applies. See also *Shivabasaya* v. *Totad Swami*[3].

[JENKINS, C. J.:—Is there any other authority besides *Kantheppa* v. *Sheshappa*[2] to show that a tenant by sufferance becomes full owner after twelve years from the time the term fixed in the lease expires ?]

If, as contended, article 139 applies only when the tenancy is determined by act of parties, we submit that the present case falls under that article, because the time by the efflux of which the tenancy determines under section 111 of the Transfer of Property Act is fixed by the parties. At the commencement of the tenancy the parties by fixing the time do an act by which the tenancy gets determined.

(1) (1885) 8 Mad., 424. (2) (1897) 22 Bom., 893.
(3) P. J. for 1896, p. 357 at p. 365.

1900.

CHANDRI v. DAJI BHAU.

JENKINS, C. J. :—The only point for our determination in this appeal is, whether the plea of limitation ought to prevail. On the 25th of June, 1877, the defendant No. 1 and his father passed a rent-note in favour of the plaintiff's mother and predecessor in title for one year.

At the end of the year the premises were not given up; nor has any rent since been paid. Under these circumstances the defendant contends that the plaintiff's claim to recover possession (for that is how this suit should be regarded) is barred. This view the plaintiff combats.

The lower Appellate Court held the plea established and dismissed the suit; from this decision this appeal has been preferred. The decision of the lower Court proceeded on the case of *Kantheppa* v. *Sheshappa*[1] and the opinion there expressed by Sir Charles Farran and Mr. Justice Candy. Before us, however, it has been contended that this opinion is no more than a *dictum*, and that the case is covered by the earlier authority of *Krishnaji* v. *Antaji*[2]. In his opening Mr. Khare argued the case on the footing of its being governed by article 139 of the Limitation Act: his argument was that, though the original tenancy had determined more than twelve years before the commencement of the suit, there had been no such determination of the tenancy that came into existence on the holding over, so that the suit was really brought within twelve years of the termination of the tenancy. In this line of argument, however, the case in the 18th Bombay does not support him; for it is there distinctly said "in this case there is no tenancy." But can it be said there is a tenancy when a tenant holds over without paying rent or the landlord's otherwise assenting to his continuing in possession? According to the finding of the lower Appellate Court in this case (by which of course we are bound) on the determination of the letting of 1877 the tenants became tenants at sufferance, and the question arises, whether between tenants at sufferance and the owners of the land there is such a relationship as is contemplated by article 139. Now it is to my mind clear, that the article deals with those cases where there has been the relationship of landlord and

(1) (1897) 22 Bom., 893. (2) (1893) 18 Bom., 256.

1900.

CHANDRI v. DAJI BHAU.

tenant. But in the case of a tenancy at sufferance there is no such relationship. Thus a release to a tenant at sufferance is void, because he hath a possession without privity. (Co. Lit. 270b.) A tenant by sufferance is only in by the laches of the owner, so that there is no privity between them.

It follows, therefore, that if article 139 governs the case, time must be counted from 1878, and not from the termination of the estate at sufferance. To meet this difficulty, Mr. Khare has argued that when an estate by sufferance arises, the governing article is not 139 but article 144. This is opposed to the Madras decisions, but it is claimed that it is supported by the decision in *Krishnaji* v. *Antaji*[1]. It is difficult to say what article was considered applicable in that case, as none was mentioned in the judgment, but from what is said by Mr. Justice Fulton, (who was a party to the decision) in the later case of *Shivabasaya* v. *Totad Swami*[2], I infer the case was treated as falling under article 139, and that the decision turned on the particular facts of the case. Certainly article 139 is the only one mentioned in the report of the argument, and no reference is made to any other article in the judgment. Apart, then, from this case, can it be successfully argued that article 139 does not apply? The only other article that could apply is article 144, but that article "is not applicable where the suit is otherwise specially provided for"—*Runchordas* v. *Parvatibai*[3]. But how can it be said that this suit is not specially provided for by article 139? The description of the suit to which that article applies is one by a landlord to recover possession from a tenant: that cannot mean a suit in which the relationship of landlord is one that still subsists; for the time from which the period for limitation begins to run is when the tenancy is determined; and this necessarily implies that the suit must be brought after the relationship of landlord and tenant has ceased. Therefore, it seems to me that this suit falls precisely within the description given in the first column of article 139. For these reasons, I would affirm the decree of the lower Court and dismiss this appeal with costs.

(1) (1893) 18 Bom., 256. (2) P. J. for 1898, 357 at p. 365.
(3) (1899) 23 Bom., 725; L. R. 26 I. A., 81.

1900.

CHANDRI v. DAJI BHAU.

CANDY, J.:—I concur. The decision in *Kantheppa* v. *Sheshappa*[1] was given after much consideration. As the late Chief Justice said, the question is one of difficulty, having regard to the state of the authorities. But we felt unable to agree with the ruling of the Madras High Court that in the case of a lessee holding over after the expiration of his lease, and thus becoming "a tenant on sufferance," it lies upon the person resisting the landlord's claim for possession, on the ground of limitation, to show that the tenancy on sufferance is determined. Their Lordships said: "All that is shown in this case is that the tenancy for the term has determined; for aught that appears, the tenancy by sufferance subsisted up to the date of the suit:" in other words, that the tenancy is determined by the suit, and thus in the absence of any circumstances showing that the tenancy by sufferance was determined prior to suit, there never could be any bar of limitation. But this assumes that in the case of what is called "tenancy by sufferance," there is the legal relationship of landlord and tenant, to which article 139 of the Limitation Act of 1877 would be applicable. But that is not so. The possession of such a person holding over is wrongful. Therefore, if article 139 is applicable (as was admitted in the Madras case), and there is no evidence from which a fresh tenancy can be inferred in the strict sense of that term, time begins to run against the landlord when the period of the fixed lease expires.

I still think that that is the correct view; and I am unable to see what other article of the Limitation Act could be applicable. Thus in the present case the landlord's right to the property having been extinguished in 1890, and no objection having been taken to the form of the decree given by the lower Appellate Court (that the plaintiff do restore possession of the property), I would confirm the decree with costs.

Decree confirmed.

(1) (1897), 22 Bom, 893.