1909 APRIL 30. — FULL BENCH. — 29 C. 606.

With respect to the cases which take an opposite view, and with all respect to the opinions expressed in the case of *Empress* v. *Baney Madhub Shaw* (1), which followed that decided by SIR RICHARD COUCH C. J., and GLOVER J., in the case of *Ishur Chunder Shaha* (2), it is sufficient to point out that the language of the Act under which the latter of these decisions was given is clearly distinguishable from the language of the present Act, and in the important particular that the words, to which I have referred, are not to be found in the earlier Act.

PRINSEP J. I am of the same opinion.

GHOSE J. I am of the same opinion.

HILL J. I am of the same opinion.

HENDERSON J. I am of the same opinion.

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29 C. 610.

Before Sir Francis William Maclean, K.C.I.E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Ghose, Mr. Justice Hill and Mr. Justice Henderson.

RANIJULLA *v.* ISHAB DHALI.* [1st May, 1902.]

Bengal Tenancy Act (VIII of 1885), Schedule III, Article 3—Limitation—Suit by an occupancy raiyat where the landlord has no hand in the ouster.

When an occupancy raiyat is dispossessed and the landlord has had no hand in the ouster, the period of limitation applicable is twelve years, and not two years under Article 3, Schedule III of the Bengal Tenancy Act.

The case of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (3), so far as the question of limitation was concerned, was not rightly decided.

THIS case was referred to a Full Bench by Rampini and Gupta JJ. on the 2nd August 1901, with the following opinion :—

This is a second appeal against a decision of the Subordinate Judge of Tipperah ; the suit out of which the appeal arises is one **[611]** to prove title to, and to recover possession of, a certain area of land, from which the plaintiffs alleged they had been dispossessed by the defendants Nos. 1 and 2 in 1300 or (1893), that is, about four years before suit ; the plaintiffs claimed the land as a one-third share of an occupancy holding, which had been sold to them by the defendants Nos. 3 and 4, the heirs of the son of the original raiyat, one Dara Gazi.

The defendants denied the dispossession and pleaded that they were in rightful possession from long before the alleged dispossession and were now holding the land under a settlement made with them by the landlord.

The Munsif found that the plaintiffs had been dispossessed as alleged, that the landlord had had nothing to do with the possession, that the suit was not barred by limitation, and that the plaintiffs had made out their title. He, therefore, decreed the suit.

On appeal the Subordinate Judge affirmed the Munsif's decision. He too found the landlord had had nothing to do with the dispossession of the plaintiff. He says :—" The landlord did not dispossess the plaintiffs, nor is such the allegation of the defendants. They simply say that the landlord registered their names in his sherishta in 1301 as tenants of the

* Reference to a Full Bench in Appeal from Appellate Decree No. 748 of 1899.

(1) (1881) I.L.R. 8 Cal. 207.
(2) (1873) 19 W. R. Cr. 34.
(3) (1900) 4 C.W.N. 665.

1902 MAY 1.

FULL BENCH.

29 C. 610.

disputed share. This recognition of the tenancy by the landlord does not amount to an act of dispossession." He accordingly found the suit was not barred by limitation, and that the plaintiffs were entitled to a decree.

The defendants now appeal. On their behalf it has been contended (1) that the suit is barred by limitation under the two years' rule prescribed by Article 3 of Schedule III to the Bengal Tenancy Act, and (2) that as the plaintiffs admittedly have purchased only a share of an occupancy holding, they have not made out any title to the land.

The appellants in support of their first plea rely on the ruling in the case of *Hara Kumar Nath* v. *Sheik Nasaruddin* (1). This ruling is certainly in their favour. It decides that when an occupancy raiyat is ousted by a third party, who subsequently **[612]** takes a settlement from the landlord, the two-years' rule of limitation applies. In the body of the judgment it is said: "It seems to us that whatever may have been the case in Bysakh 1298, the fact that the landlord made a settlement with the defendant later on must relate back to the earlier period, and we must take it that the original ouster was, if not in substance, in reality with the assent of the landlord." We are unable to agree with this ruling.

In the case of *Eradut* v. *Daloo Sheikh* (2), it has been held that when the landlord of an occupancy raiyat has had no hand in his ouster, the period of limitation is 12 years. In the present case it is clear that the landlord had no hand in the ouster, but on the ruling in the case of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (1) the period of limitation will, notwithstanding this fact, be two years. We cannot think that this is right. The effect of such a rule would be this. A raiyat who has been dispossessed by a third party, the landlord having no hand in the ouster, will have 12 years within which to bring his suit for possession. He may therefore not deem it necessary to sue within the two years within which he would have had to sue, if the landlord had dispossessed him. The moment the two years have elapsed, however, the dispossessing third party has only to take a settlement from the landlord, and the period of limitation applicable is reduced from twelve years to two, and the dispossessed raiyat, when he had still ten years to sue in, finds his suit is altogether barred.

The ruling in *Hara Kumar Nath* v. *Sheikh Nasaruddin* (1) has been distinguished from the subsequent unreported case of Special Appeal No. 706 of 1899 decided by Banerji and Brett, JJ., on the 3rd January 1901, but we are unable to see any ground for any real distinction between the present case and that of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (1). From the judgment of the Subordinate Judge in that case, which was affirmed by this Court, it is clear that the landlord had nothing whatever to do with the ouster of the plaintiff. The Subordinate Judge in his judgment in that case says: Surely the dispossession in Baisakh **[613]** 1298, before the defendant got the lease from the landlord, was not at the instance of the landlord, but the dispossession at the instance of the landlord must be considered at the date of the potta by which the landlord settled the land with the defendant, and that was in Kartic 1299. The present suit which was instituted in Aughran 1303, *i.e.*, more than two years after the date of the defendant's potta, is barred by limitation under Article 3, Schedule III, Bengal Tenancy Act."

(1) (1900) 4 C. W. N. 665. (2) (1893) 1 C. W. N. 573.

1902 MAY 1. FULL BENCH. 29 C. 610.

The ruling in *Bheka Singh* v. *Nakchhed Singh* (1) seems at first sight to support the decision in *Hara Kumar Nath* v. *Sheikh Nasaruddin* (2), for the head-note says the two-years' rule of limitation applies to a suit brought against a tenant with whom the land was settled by the landlord. But this head-note is misleading. The plaintiff in that suit was found to have been dispossessed by the acts of the servants of the landlord, who in that case was the Secretary of State. The ruling in the case of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (2) therefore stands alone.

As we cannot agree with it, we must refer this case to a Full Bench, which we accordingly do.

The questions we would propound for the decision of the Full Bench are as follows:—

(1) When an occupancy raiyat is dispossessed and the landlord has had no hand in the ouster, what is the period of limitation applicable. Is it twelve years or two years under Article 3, Schedule III of the Bengal Tenancy Act?

(2) Has the case of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (2) been rightly decided?

Babu *Hara Prasad Chatterjee* and Babu *Krishna Prasad Sarvadhicary* (for Babu *Satish Chunder Ghose*) for the appellant.

Babu *Harendra Narayan Mitter* for the respondent.

MACLEAN, C. J. The question referred is. When an occupancy raiyat is dispossessed and the landlord has had no hand in the ouster, what is the period of limitation applicable? Is it twelve **[614]** years or two years under Article 3, Schedule III of the Bengal Tenancy Act? In my opinion the period of twelve years applies, in the state of circumstances mentioned in the question. And if the case of *Hara Kumar Nath* v. *Sheikh Nasaruddin* (2) decides the contrary, in my opinion, with all deference to the learned Judges who take the opposite view, that case was not rightly decided. I notice in that case that the learned Judges say: "And we must take it that the original ouster was, if not in substance, in reality done with the assent of the landlord." That was the finding.

As regards any other points in the present case, the case must go back for their decision to the Divison Bench which submitted it to us, with this expression of opinion upon the point actually referred.

The appellant must pay the costs of this hearing.

PRINSEP, J. I am of the same opinion.

GHOSE, J. I am of the same opinion.

HILL, J. I am of the same opinion.

HENDERSON, J. I am of the same opinion.

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29 C. 614.

CIVIL RULE.

Before Mr. Justice Stevens and Mr. Justice Harington.

FUZLUR RAHMAN *v.* KRISHNA PRASAD.* [22nd May, 1902.]

Specific Relief Act (I of 1877) s. 9.—Hât—Suit to recover possession of a hât—Delivery of possession—Incorporeal right—Illegal dispossession.

* Civil Rule No. 2585 of 1901 against the order passed by Babu K. C. Mukerjee, Munsiff of Purulia, dated the 27th July 1901.

(1) (1896) I. L. R. 24 Cal. 40. (2) (1900) 4 C. W. N. 665.