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the appellants. But then it is argued that there is another point of difference between the two cases which has the opposite effect, and makes the present case a stronger one against the appellants than the case cited, and that point is this, that whereas in the case cited, there was only an order for attachment of property acquiesced in by the judgment-debtors which was held to preclude them from objecting to the validity of the application [126] on which that order was made, here there was an express order disallowing the very objection that the judgment-debtors are now raising, namely, that the previous application was barred by limitation; and that order remaining unreversed must, upon the authority of the case cited, operate as a bar to the present contention of the appellants. But I am unable to accept this view as correct. There is nothing to show that the Court disallowed the objection of the judgment-debtors on the merits. On the contrary the fact, appearing upon the order sheet, that the case was adjourned at the instance of the decree-holder to enable his pleader to produce authority in support of his contention, would rather go to show that the merits were on the other side. The dismissal, of the objection was evidently on account of the objector's default in appearing; and as simultaneously with such dismissal, the application for execution was itself refused and not simply struck off, the dismissal of the objection cannot rightly be held to operate as a bar to its being ugred when the decree-holder applies for execution again. This view is in accordance with the case cited for the appellants.

Again, as the order refusing the application for execution, which was the order disposing of the execution proceeding instituted, was not based upon the order disallowing the judgment-debtors' objections, but was made in spite of it, the order disallowing the judgment-debtors' objections cannot be held to be conclusive against them. This view is supported by the observations of the Privy Council in the case of *Run Bahadur Singh* v. *Lucho Koer* (1). I may add that as the application for execution was refused and not simply struck off, the order for attachment, and any attachment made in pursuance thereof, must be taken to have become inoperative upon the refusal of the application for execution.

For the foregoing reasons, I am of opinion that the contention of the appellants should prevail, the order of the Court of appeal below should be set aside, and that of the first Court refusing the present application for execution restored with costs in this Court and in the Court below.

MACLEAN, C. J.—I concur.

Appeal allowed.

28 C. 127.

[127] *Before Mr. Justice Rampini and Mr. Justice Pratt.*

PARAMESHWAR NOMOSUDRA (*Defendant*) *v.* KALI MOHUN NOMOSUDRA (*Plaintiff*).* [24th August, 1900.]

Limitation—Bengal Tenancy Act (VIII of 1885), sch. III, art. 3—Suit for recovery of possession by an occupancy raiyat—Dispossession by landlords, fractional, sole, or entire body of—Occupancy raiyat.

* Appeal from Appellate Decree No. 1071 of 1898, against the decree of Babu Mohendra Nath Roy, Subordinate Judge of Mymensingh, dated the 21st of January 1898, reversing the decree of Babu Brojendra Lall Dey, Munsif of Kishoregunge, dated the 23rd of December 1896.

(1) (1884) I. L. R. 11 Cal. 301; L. R. 12 I. A. 23.

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The period within which an occupancy raiyat can sue to recover possession of land from which he has been dispossessed by his landlord, is two years as laid down in art. 3, sch. III of the Bengal Tenancy Act, whether such dispossession be by a fractional landlord, the sole landlord, or the entire body of landlords.

Joolmutty Bewa v. *Kali Prasanna Roy* (1) referred to.

THIS was a suit for declaration of the plaintiff's right to a holding and for recovery of possession of the same. The plaintiff **[128]** alleged that it belonged to his father Kancha Changa, and that after his father's death, he let it out in *burga* to one Fedu Changa whom the defendants forcibly dispossessed.

The defendant No. 3 contended that the plaintiff not being in possession of the land in dispute within twelve years of the institution of the suit the claim was barred by limitation ; and he further alleged that before the partition of the original taluk comprising the land in suit, he having been a part-proprietor of the said taluq was holding some land as *khamar* and some as *jote*; and after the partition the land in dispute having been included in another *malik's* share, he continued in possession of the

(1) JOOLMUTTY BEWA AND OTHERS (*Plaintiffs*) *v.* KALI PRASANNA ROY AND OTHERS (*Defendants*).‡

Limitation—Bengal Tenancy Act (VIII of 1885), sch. III, art. 3—Suit by occupancy raiyat for recovery of possession of land after dispossession by landlord—Dispossession at the instigation of co-sharer landlord.

THIS suit was instituted for recovery of possession of certain land from which the plaintiff, an occupancy raiyat, was dispossessed by the defendants Nos. 1, 2 and 3 at the instigation of the defendant No. 4, who was a co-sharer landlord.

The defendants pleaded that the land in suit did not appertain to the taluq, of which the defendant No. 4 was a co-sharer, but it belonged to a taluq of which the defendant No. 4 was the sole proprietor, and that he had let the land in question to the defendants, Nos. 1, 2 and 3, who were in possession of the same as his tenants.

Both the lower Courts were of opinion that the claim was barred by limitation as prescribed by sch. III, art. 3, of the Bengal Tenancy Act, and they accordingly dismissed the suit.

The plaintiff appealed to the High Court.

1893, AUGUST 8. Dr. *Rash Behari Ghose*, Babu *Sarada Charan Mitter*, and Babu *Sarat Chander Roy*, for the appellant.

Babu *Harendra Narayan Mitter*, for the respondents.

Cur. adv. vult.

1893, AUGUST 15. The Court (TREVELYAN and RAMPINI, JJ.), owing to some conflicting decisions of the Court on the question of limitation involved in this case, referred the appeal under Rule 2, Chap. V of the High Court Rules, for the final decision of a Full Bench, in the following terms :—

"This appeal is against a decree of the District Judge of Dacca, who has held the plaintiff's suit to be barred by limitation.

"The plaintiff alleges that he is the occupancy raiyat of certain land ; that the defendant No. 4 is one of their landlords (i.e., a co-sharer landlord) ; and that he, with the assistance of defendants Nos. 1, 2 and 3 has dispossessed the plaintiff from the land, or rather that the defendants Nos. 1, 2 and 3 at the instigation of defendant No. 4 have dispossessed him. It is admitted that the defendants Nos. 1, 2 and 3 are in possession of the land. In these circumstances the plaintiff seeks to recover possession of the land.

"The defence is that the land in dispute does not appertain to the taluk of which the defendant No. 4 is a co-sharer landlord. It is said it belongs to a taluk of which the defendant No. 4 is alone the proprietor, and that he has let the land to the defendants Nos. 1, 2 and 3, who are now in possession of it as his tenants.

"The Lower Courts have dismissed the suit, holding that it is barred by the two years' rule of limitation as prescribed by art. 3, sch. III of the Bengal

‡ Appeal from Appellate Decree No. 1513 of 1892, against the decree of C. M. W. Brett, Esquire, District Judge of Dacca, dated the 22nd of June 1892, affirming the decree of Babu Mohendra Nath Roy, Munsif of Manikgunge, dated the 13th of November 1891.