Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

1869
July 16

TRILOCHAN GHOSE AND OTHERS (DEFENDANTS) *v.* KAILAS NATH SIDHANTO BHOWMIK BHATTACHARJI (PLAINTIFF) AND OTHERS (DEFENDANTS.)*

Suit for Possession—Onus Probandi—Inference of Title.

Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendants, the lower Appellate Court threw upon the defendant the burthen of proving his title, and on his failing to do so, decreed the case. *Held*, that this was a fair inference of title and of a right to be replaced in possession, without investigating the mode of acquisition of the property.

Baboos *Purna Chandra Shome* and *Bangshi Dar Sen* for appellants.

Baboos *Ashutash Chatierjee* and *Chandra Madhab Ghose* for respondents.

THE facts of the case sufficiently appear in the judgment of

JACKSON, J.—I think the decision of the lower Appellate Court in this case is substantially right. I do not think we are called upon to set that decision aside, or to refer any point, as suggested, for the consideration of the Full Bench.

The plaintiff's case here was, that he had purchased from the heirs of one Efazuddin, who was proprietor of an Ayma close to the talook of the defendants called Chuk Bansbaria; that he had held possession down to 1274 (1867); and that he was forcibly dispossessed by the defendants. The defendants deny that the land in dispute was a part of the Ayma in question. They say it belonged as mal land to their talook, and was held by Efazuddin as tenant under them.

The lower Appellate Court found that the plaintiff had been in possession down to 1274 (1867), and had been wrong-

* Special Appeal, No. 194 of 1869, from a decree of the Judge of Hooghly, dated the 3rd September 1868, affirming a decree of the Sudder Ameen of that district, dated the 30th March 1869.

fully and forcibly dispossessed by the defendants; and under those circumstances, he called upon the defendants to show by what right they had dispossessed the plaintiff; and the defendants failing to show any such right, he declared that he would not enquire into the title of the plaintiff; and, in coming to that conclusion, he refers to a decision of this Court in *Dabjee Sahoo* v. *Shaikh Tumeezooddeen* (1).

It may be quite conceded, that the Judge's language in this case has been a little unguarded, or at any rate that he has not used exactly proper words to convey his meaning. If the Judge meant to say that possession as a thing apart from title was something which would give the plaintiff a right to recover possession of his land, I do not think we should uphold him in that opinion; but I have no doubt that what the Judge meant to say in this case was that the plaintiff having shown possession down to 1274, he could infer from the fact of possession a right to be replaced in possession, that is, some title of the land and thought it needless to enquire further into title, that is to say to require documentary proof, or specific proof of the mode of acquisition upon which that title was founded. Though not put in so many words, yet I think, this was what the Judge meant; and I think he was right. I think he was also in accordance with the ruling in the case of *Dabjee Sahoo* v. *Shaikh Tumeezoodeen* (1).

We have been referred to another case, *Kalee Chunder Sein* v. *Adoo Shaikh* (2), in which, under the circumstances stated in that case, a Division Bench refused to infer the title of the plaintiff, and ordered the suit to be dismissed. I think that case was distinguishable from the present, and without saying whether I entirely concur in the opinion expressed in that case, I think it no wise militates against the conclusion at which we arrived in the present case.

The decision of the lower Appellate Court will be affirmed with costs.

MARKBY, J.—I am of the same opinion. I take it that the cases fully establish this proposition, that where a plaintiff who

(1) 10 W. R., 102. (2) 9 W R., 602.

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seeks to recover possession from the defendant, shows that he has been at some period peaceably in possession of the property which he claims, all that can do for him is to afford some evidence from which the Courts may infer title; and I am not aware that there is any conflict in the decisions of this Court upon that point. Certainly, there is none so far as the decisions which have been brought before us by the vakeel for the appellant are concerned. The case of *Dabjee Sahoo* v. *Saikh Tumeezood-deen* (1) is perfectly clear. There the plaintiff held under a purchase from a person who had been conclusively decided to have had no title. Of course, under those circumstances, his possession could avail him nothing, supposing as it no doubt was in that case, that the possession had lasted less than 12 years; the case of *Kalee Chunder Sein* v. *Adoo Shaikh* (2) also I entirely concur in. That case simply lays down the proposition that possession by plaintiff can only be used as evidence of title. In this case the Judge has only so used it. The plaintiff was admitted to be an Aymadar, and to have been in possession of the land in dispute down to the year 1274 (1867); the defendant was the talookdar, and the defendant has recently turned out the plaintiff, who, up to that period, was peaceably in possession, and what I take the Court in substance to have said in this case is this: "upon that state of circumstances; if the defendant "carries his case no further than that, I shall assume that the "plaintiff had a title." In assuming that, I think he was acting in perfect accord with the decisions referred to, and, I may say, I am not acquainted with any decision here or elsewhere that lays down any different principle.

(1) 10 W. R., 102. (2) 9 W. R. 602.