

Before Mr. Justice Glover and Mr. Justice Mitter.

1871
March .22 BINDUBASHINI PASI (ONE OF THE PLAINTIFFS) v. J. R. RENNY (ONE OF THE DEFENDANTS).*

Limitation Act (XIV of 1859), s. 1, cl., 12—Possession under Act VIII of 1859, s. 224—Possession within twelve years admitted by party through whom adverse claim is made.

A suit for possession of immoveable property is not barred by the Law of Limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under section 224, Act VIII of 1859, or if possession by the plaintiff has been admitted within twelve years by the party through whom the defendant claims.

Baboo Mohini Mohan Roy for the appellant.

Mr. C. Gregory for the respondent.

The judgment of the Court was delivered by

MITTER, J.—It appears that Uma Charan Ghose and others, the alleged lessors of the plaintiff, instituted a suit against Mr. Renny, the predecessor of the defendants, for possession of a moiety of certain lands appertaining to a Shámilat Talook in Mauza Perikhalli. This suit was decided on the 25th February 1860, and as the lands covered by the decree were in the possession of ryots who were entitled to occupy the same, possession was delivered to the lessors of the plaintiff, under the provisions of section 224 of the Code of Civil Procedure, by a proclamation issued to the occupants of the property by beat of drum, and also, as the Nazir's report shows, by taking kabuliats from them. Subsequently the said Uma Charan Ghose and others brought another suit against Mr. Renny for possession of the remaining moiety of the lands sued for in the first case, on the 12th January 1860. Whilst this suit was pending, a dispute arose under the provisions of Act IV of 1840 between the said Uma Charan Ghose and others on the one side, and Mr. Renny on the other; and an award was made in favor of the former on the 18th June 1861. After the passing of this award, Mr. Renny's pleader appeared in the suit and stated to the Court that, as possession of the entire lands then in dispute had been made over to the said Uma Charan Ghose and others under the Act IV award above referred to, the only question which the Court had to decide was whether the plaintiff was entitled to his costs or not. It appears that this application being submitted to the Court, the Court did not make any decree for the possession of the lands, but gave a decree to the plaintiffs for the costs incurred by them in the litigation.

The plaintiff in this suit subsequently took a lease from the said Uma Charan Ghose and others in the year 1270 (1863), and the present action was brought by her for possession of the entire 16 annas of the land which were in dispute in the two previous suits above referred to. The lower Appellate Court has, now found on remand that, although formal possession was given to the lessors of the plaintiff within twelve years prior to the institution of the present suit,

* Special Appeal, No. 1829 of 1870, from a decree of the Subordinate Judge of Jessore dated the 2nd June 1870, affirming a decree of the Moonsiff of that district, dated the 31st March 1869.

yet such possession was not sufficient to save her claim from the operation of the Law of Limitation when there was no reliable evidence on the record to prove that she either by her lessors or herself had actually received rents from the ryots within twelve years prior to the date of the institution of the suit.

We are of opinion that this decision is altogether erroneous. It does not lie in the mouth of Mr. Renny or his successors in title to say that the delivery of possession in the execution department, under the provisions of section 224, was not sufficient in law to prove that the lessors of the plaintiff had obtained possession of the property covered by the decree. If Mr. Renny or his successors, notwithstanding such delivery, continued to oppose the occupation of the property by the lessors of the plaintiff, every such Act of opposition would give to the plaintiff a fresh cause of action against them, for the old dispute had been already set at rest by the final proceedings of a Court of competent jurisdiction. It was no fault of the lessors of the plaintiff that possession was given to them by a proclamation issued under section 224. The law prescribes a certain mode for the delivery of possession in cases where the lands are in the actual occupancy of tenants entitled to occupy the same; and it was in that mode that possession was given according to the Judge's finding to the lessors of the plaintiff, at least of one-half the lands now in dispute. With regard to the other half, there was the Act IV award, and the admission made by Mr. Renny's pleader in the suit instituted on the 12th January 1860, in which he distinctly acknowledged that possession of the lands claimed in that suit had been actually made over by his client to the lessors of the plaintiff. Under these circumstances, it seems to us clear that the point of limitation cannot be maintained in this case. We have some doubts, however, that the identity of the lands has not been properly determined by the lower Appellate Court; and we therefore reverse the decision of the Subordinate Judge, and direct the case to be remanded to that officer for a fresh decision on the merits. If the plaintiff can show either that the lands in dispute are covered by the decree which was passed in favour of the lessors in the suit brought on the 25th February 1860, which decree was subsequently executed in the manner stated above, or even that they are covered by the award under Act IV of 1840 and the petition filed by the pleader of Mr. Renny in the second suit, there can be no doubt whatever that the plaintiff would be entitled to recover those lands from the representatives of Mr. Renny, who appear to be the principal defendants in this case.

The costs of this appeal and of the lower Appellate Court will abide the ultimate result.

Before Mr. Justice Phear.

Haji Abdul Vidona Jonas v. Haji Harone Esmile.

Registration—Agreement for lease—Specific Performance.

An agreement for a lease does not require registration.

This was a suit for specific performance of an agreement to lease. The

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