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June 25.

Before Mr. Justic L. S. Jackson and Mr Justice Glover.

CHOWDHARI NILKANTH PRASAD SINGH *v.* DIGNARAYAN SINGH.*

Estoppel—Court of Concurrent Jurisdiction—Limitation.

A. sued B. and C., in the Civil Court, to recover possession of certain lands, of which he alleged that they had dispossessed him, under a decree obtained by them in a suit in which he had previously sued B. in the Civil Court, before Act X. of 1859 had been passed, for rent, in which suit C. had been added as a party and had proved his title to the lands against A. *Held*, that A.'s suit must fail, on the ground, that it involved a material issue of fact which had already been determined by a Court of Concurrent Jurisdiction in the former suit which was between the same parties, and which issue disposed of the present suit. Also *held*, on the facts, that A. was barred by limitation.

THIS was a suit to recover possession, with mesne profits, of a certain share of Mouzas Dhira and Mathurapore, appertaining to Pergunnah Bishthazari. The plaintiffs (appellants) alleged that Chowdhari Dutt, and the other plaintiffs' ancestors had purchased, at a sale in execution of a decree, a certain share of the entire estate, Bishthazari; that having failed to obtain possession of the same, they instituted a suit, and got a decree, in execution of which they were put in possession of the property purchased by them, without meeting any objection on the part of Baboo Ramnandan, under whom the defendant Dignarayan claimed; that subsequently Chowdhari had granted a lease in favor of Ahlad Singh, another defendant, of the aforesaid share, and of other mouzas, from 1260 to 1264 (1853-57); that on the default of Ahlad Singh to pay the amount of rent due from him, the plaintiffs brought a suit against him in the Court of the Principal Sudder Ameen of Monghyr, on the 7th of May 1857, for arrears of rent; that the defence set up by Ahlad Singh was, that he was not in possession of the two Mouzas, Mathurapoor and Dhira; and, therefore, not liable to pay rent for them for the years 1260 to 1264 (1853-57). Dignarayan Singh intervened

* Regular Appeal, No. 29 of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore.

in that suit, and set up that he was in possession of the 16-annas share of Mouza Dhira and 12-annas of Mathurapore, and that neither the plaintiffs nor their predecessors had ever held possession of those two estates. The rent suit was finally dismissed by the High Court, on the 28th May 1866. The plaintiffs, considering that the question of title was not decided by that suit, instituted the present suit for possession, alleging that they were dispossessed in 1274 (1867) by the defendants, in pursuance of the decree in the rent suit.

Dignarayan Singh, in his written statement, set up that the plaintiffs' suit was barred by lapse of time, inasmuch as they had not been in possession within twelve years next preceding the institution of this suit; and that the right of the defendants to the property in question had been established by the decision of the High Court, dated the 28th of May 1866; and, therefore, this present suit of the plaintiffs, for the same cause of action, would not lie under section 2 of Act VIII. of 1859.

The Principal Sudder Ameen, on the issue of limitation, decided the suit against the plaintiffs. He found that they were out of possession for more than 12 years, having been ousted so far back as 1260 (1853.)

Baboo *Krishna Sakha Mookerjea*, for respondent, raised an objection, under section 348 of Act VIII. of 1859, that the suit of the plaintiff should also have been dismissed, on the ground that it could not be entertained under section 2 of Act VIII. of 1859, inasmuch as the question of title involved in the suit have been already adjudicated upon by a Court of competent jurisdiction, and decided in favour of the present defendant.

Baboo *Chandra Madhab Ghose* (Baboo *Anookool Chandra Mookerjea* and Mr. *C. Gregory* with him).—The decision passed by the High Court, in the previous rent suit, cannot be held binding on the plaintiffs so as to bar a subsequent suit brought for the recovery of possession. The question of right incidentally arose in the former suit, and was tried merely for the purpose of determining who is entitled to the receipt of rent. It

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cannot, therefore, be held that that was a final adjudication of the rights of the contending parties. The Court, which tried the suit for rent, was not a Court of competent jurisdiction to decide on the question of right and title. *Mussamut Edun* v. *Mussamut Bechun* (1). *Secondly*, the finding of the Principal Sudder Ameen, on the point of limitation, was not based on legal and satisfactory evidence. He did not give due weight to the evidence adduced by the plaintiffs in support of their claim.

The judgment of the Court was delivered by

JACKSON, J. (after stating the facts).—The principal defendant raised two issues in bar at the hearing of the suit. *First*, that the Court was precluded from entertaining it under section 2 of the Civil Procedure Code; *secondly*, that the suit was barred by limitation.

The Principal Sudder Ameen appears to have selected for trial the issue of limitation, and he gives no judgment on the other issue in bar. He held that the plaintiffs' suit was barred, inasmuch as no possession of the lands in dispute within 12 years was made out to his satisfaction. Against this decision the plaintiffs have appealed, and the defendant, Dignarayan Singh, on his part, has tendered an objection under section 348, on the ground that the suit should have been thrown out under section 2 of Act VIII. of 1859.

We first heard the argument upon the objection last mentioned, and it appears to us, that although the objection cannot be maintained precisely in the form which it bears, yet, in effect, the plaintiffs' suit must fail, on the ground that it involves a material issue of fact which has been already determined by a competent Court, between the same parties, and which issue disposes of the present suit. The finding of the Court, in the former case, may, in our opinion, be used as evidence, and as conclusive evidence against the plaintiff in this suit.

We have been much pressed on the side of the appellant with the contention, that the previous decree, being merely a decree in a suit for rent against the plaintiffs lessee, was not evidence against the plaintiff, and we are referred to the case

(1) 2 Ind. Jur., N.S., 264 and 8 W. R., 175.

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of *Musst. Edun* v. *Musst. Bechun*, decided by a Bench of three Judges (1).

It seems to me that the ecision in that case was based mainly on the consideration that the Court, which had given the previous decision relied upon, was not a Court of concurrent jurisdiction with that in which the later suit was brought. That was a decision in a rent suit in the Collector's Court under Act X. of 1859, the Collector's Court being a Court limited in its jurisdiction and competent to determine the matter immediately before it, but not competent finally to determine the other questions which arose incidentally in the case.

This is not the case here, for the previous decision was given in a suit in the Civil Court, originally a suit between the plaintiff and his lessee, but in which a third party, the appellant before us, who claimed the whole title to the land in question, was allowed to intervene, whereon by the direction of the High Court on special appeal, an issue was ordered to be tried as between the intervenor and the plaintiff, namely, "Whether the whole interest, which the plaintiff's predecessor in estate may have had in these mouzas, had not passed out of them by deeds of sale, compromise, or otherwise, prior to the date of the pottah, to Ahlad Singh."

The very issue, which is intended to be decided in the case, was thus raised between the same parties and in a Court competent to decide this question. It is true that the original object of the suit was to recover rent, but by the intervention of a third party, the question of title was gone into, not und r section 77 of Act X. of 1859, and in a Court restricted in its jurisdiction, but in a Court competent to decide that question finally. It would, perhaps, suffice for us to stop here, and to say that the question of title involved in the present suit being one which has been already raised and determined between the same parties by a Court of competent jurisdiction, the plaintiffs must necessarily fail. But, as the parties may question our decision, on this point, we have thought it advisable to enquire further, if the Court below was right on the point which it did decide, *viz.*, of limitation, and having the evidence before us, and

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having heard that evidence, we have no hesitation in affirming its judgment.

It seems to us that there is nothing like any evidence to show that the plaintiffs were in possession within 12 years; on the contrary, the decision in the suit above referred to, goes to show that at the period of Ahlad Singh's lease, the plaintiffs were not in possession of the land, and we see no reason to believe that they ever got into possession afterwards.

We think it right to state, that Baboo Chandra Madhab Ghose proposed to submit to us certain documents, and what he called "the history of the previous litigation," commencing from the year 1828, but, having ascertained from him that the documents in question do not contain any evidence of possession within 12 years, and that they are not corroborative of the evidence of the witnesses as to that possession, we decline going into that mass of documents.

We think, therefore, for these reasons and for those referred to above, that the plaintiffs' suit has been rightly dismissed, and that this appeal also must be dismissed with costs.

Before Mr. Justice Phear and Mr. Justice Hobhouse,

ASU MIA *v.* RAJU MIA. *

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Limitation—Lessee under Government—Act XIV. of 1859, *s.* 1, *cl.* 12 *and s* 17.

A. claimed certain immovable property as lessee, under a Government settlement made in 1859. B. had been in possession for more than 12 years before the institution of the suit. *Held*, that the suit was barred under clause 12 of section 1 of Act XIV of 1859. The mere fact that A. claimed as lessee under Government did not entitle him to the benefit of section 17, Act XIV. of 1859.

THIS was a suit brought in the Court of the Moonsiff of Sealtakh, in the district of Cachar, to recover possession of 12 *katas* and 5 *pans* of land.

The plaintiff derived their title from a settlement entered into with them by Government in 1859, but the principal defendant raised the defence of limitation, on the ground that he had

* Special Appeal, No. 3137, from a decree of the Officiating Deputy Commissioner of Cachar, reversing a decree of a Moonsiff of that district.