

Kangali Dhoni was a gaming-house. Therefore, although the action of the Police may have been illegal, this would not exculpate the accused, or prevent the Magistrate convicting them on other independent evidence.

We, therefore, decline to interfere with the order of the Deputy Magistrate.

*Conviction affirmed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Morris and Mr. Justice Prinsep.*

PORESH NARAIN ROY (PLAINTIFF) v. KASSI CHUNDER TALUK-  
DAR (DEFENDANT).\*

1878  
Dec. 19.

*Limitation—Non-payment of Rent by Occupancy-ryot—Title to Land—Admission by Tenant of Liability to pay Rent.*

The non-payment of rent for a term of twelve years and more does not relieve an occupancy-ryot from the status of a tenant so as to give him a title to the land. Rent falls due at certain periods, and the failure to pay it becomes a recurring cause of action, and, therefore, where the right to take rent is admitted by the ryot, no question of limitation can arise.

THIS was a suit for the possession of one biga of land and of a building or a portion thereof. The plaintiff stated that the defendant took possession of a portion of the land in question in the month of Aghran 1275 (December 1868), and gradually encroached on the remainder, and erected buildings thereon; and that in the month of Assar 1279 (June 1872) and the month of Joisto 1281 (May 1874) he (the plaintiff) gave the defendant notice to desist from building and to quit the land; but that, notwithstanding such notice, the defendant remained in possession. Both the plaintiff and the defendant admitted that the land belonged to the jote of one Krishna Kishore Dutt,

\* Appeal from Appellate Decree, No. 819 of 1878, against the decree of J. R. Hallet, Esq., Judge of Zilla Rajshahye, dated the 9th of January 1878, affirming the decree of Baboo Nund Coomar Bose, Roy Bahadur, Subordinate Judge of that District, dated the 28th August 1876.

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and that one Gossain Gunga Dutt Bharuti was the malik of the jote by purchase, and the plaintiff stated that he had obtained a dur-jote (settlement) of that jote from the Gossain.

The defendant in his written statement stated that his vendor, one Potit Pabun Sircar, after purchasing the land and house, and acquiring the patta, came into possession; and that the plaintiff's predecessor, Gossain Gunga Dutt Bharuti, being aware of it, purchased from one Khadum Moni Dassi the right to receive rent from the Sircar, and enjoyed such right accordingly; that, subsequently, when he purchased the land and the bari, and obtained possession of them, the Gossain, admitting his vendor's right and possession, took out execution against the vendor and attached the house. That upon this the defendant preferred a claim under his purchased right, and the Gossain released the house from attachment on the 18th Aghran 1275 (2nd December 1868), and that, long after that time, the plaintiff, with a knowledge of these facts and of the defendant's right and possession only, acquired a right from the Gossain to receive rent of the land from the defendant. That after this, the plaintiff admitting the defendant's jote-right served a notice on him on the 27th of Pous 1279, under the provisions of s. 14 of Act VIII of 1869, for the purpose of enhancing the rent of that land, and on the basis thereof instituted a suit against the defendant. The defendant also pleaded limitation. Both the lower Courts dismissed the suit on the ground of limitation.

The plaintiff appealed to the High Court.

Baboo *Rash Behary Ghose* for the appellant.

Baboo *Sreenath Dass* and Baboo *Hem Chunder Banerjee* for the respondent.

The judgment of the Court was delivered by

MORRIS, J.—The objection taken in special appeal is, that the lower Court has dismissed the suit of ejectment brought by the plaintiff, on the ground that it is barred by the law of limitation, owing to the defendant having proved possession of the land in suit for more than twelve years, and that so it has given a title to the defendant in the land arising out of adverse

possession, which is not warranted by its own finding of fact or the pleadings in the cause.

The plaintiff derived his title from one Gossain, who was examined as a witness on his behalf. In his judgment the Judge says,—“But this Gossain’s deposition, moreover, must be taken as a whole, and it appears to me to be fatal to plaintiff. He says, defendant and his two predecessors never paid him any rent, and it has been proved in the evidence that they have occupied the land for more than twelve years. With regard to what defendant got from Potit Pabun, therefore, I agree with the Subordinate Judge that limitation bars the suit.” It is clear from this that the Judge is of opinion that, whereas the defendant occupied the land for more than twelve years, and during that time never paid rent to the plaintiff or his predecessor on account of it, therefore adverse possession has arisen on the part of the defendant, which has given him an independent title in the land. He appears to think that the non-payment of rent for a term of twelve years and more relieves an occupancy-ryot from the status of a tenant. But this is manifestly wrong, for if the defendant recognises the title of the plaintiff to take rent, the mere fact of the plaintiff abstaining for a number of years from taking it does not in itself create in the defendant an independent title in the land. As rent falls due year by year, or kist by kist, the failure to pay becomes a recurring cause of action, and, therefore, where the right to take rent is admitted by the ryot-defendant, no question of limitation can arise. But it is said that the defendant raised broadly, in answer to the suit, the plea of general limitation, and so set up an independent title arising out of long adverse possession; and that there is a distinct finding of the Subordinate Judge on this point in favor of the defendant. But on referring to the plaint as well as the written statement of the defendant, we observe, that it was to meet the allegation of the plaintiff that he was a trespasser, the defendant asserted that so far from being a trespasser he had been in possession of the land for upwards of twelve years, and could, therefore, plead limitation so as to prevent the plaintiff from ousting him. It was only by way of an argument to resist the right

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of the plaintiff to evict, that the defendant raised the general plea of limitation, and laid stress on his long continued possession and occupation of the land. His actual title in it he disclosed afterwards in para. 9. of his written statement. There he stated succinctly that the person from whom he purchased the tenure was one Potit Pabun Sircar, who again obtained his title,—namely, a permanent dur-jote potta,—from the superior jote-dar, Khadum Moni Dassi; that Gossain Gunga Dutt Bharuti purchased the rights of Kadhum Moni Dassi to receive rent for this jote, and that, subsequently, the plaintiff acquired the same rights from the Gossain to receive the rent. There is thus here a clear admission of the title of the plaintiff to receive rent from the defendant, and the plea of limitation is set up simply with a view to prove that long continued occupation, not necessarily adverse possession on his part, bars the suit of the plaintiff.

Then as to the finding of the Subordinate Judge. No doubt, he does speak of dur-jote belonging to both parties, and of the plaintiff not having produced his title-deeds or proved that the lands of the defendant's jote were included in the lands of his, the plaintiff's, jote. But it seems to us that this point of title arising from long continued adverse possession is entirely an idea of the Subordinate Judge's own.

It is in no way warranted by the pleadings or by the answers given on the examination of the pleaders of the parties which have been read to us. It is clear at any rate that this ground was not taken before the Judge. In summarising the case of the respondent, he says as follows as regards limitation:—

“As to limitation it applies to all land. Defendant could not appeal against the finding of the lower Court, that he and his predecessor were plaintiff's and his predecessors' tenants, because it is in defendant's favor. But no act of ownership on the part of plaintiff or his predecessor, is proved, so that defendant and his predecessor must be regarded as holding adversely.”

As before observed, the conclusion of the Judge is, that, inasmuch as the landlord took no rent for more than twelve years, the right which he had to receive the rent is now gone, and an

independent title created in the defendant. This is a false conclusion, and is no ground for dismissing the suit. Had this point stood alone, we should have deemed it necessary to remand the suit to the Judge for retrial; but we find that a remand is really unnecessary, because both Courts recognize the long continued occupation of the defendant in the capacity which he himself acknowledges, and so the right of action on which the plaintiff bases this suit entirely fails.

We think, therefore, that the suit was rightly dismissed. We accordingly affirm the order of dismissal, but we differ from the lower Court in this, that we affirm no adverse title in the defendant, arising out of long continued non-payment of rent or occupation of the land. The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

PANDAH GAZI (PLAINTIFF) v. JENNUDDI AND OTHERS (DEFENDANTS).\*

1878  
July 25.

*Standing Crops—Immoveable Property—Limitation Acts (IX of 1871), Sched. ii, art. 26; (Act XV of 1877), Sched. ii, arts. 36, 47—Registration Act (III of 1877), s. 3.*

Standing crops are immoveable property within the meaning of the Limitation Act.

THIS was a suit brought in the Small Cause Court for recovery of compensation for crops alleged to have been wrongfully removed by the defendants on the 24th and 25th December 1875. This suit was instituted on the 22nd of December 1877, and on the 21st January 1878 was dismissed on the ground of being barred by limitation under Act IX of 1871, sched. ii, art. 26. The plaintiff applied for a review of judgment, alleging that, for the purposes of this suit, standing crops should be considered as immoveable property; and submitted further that, even if standing crops were moveable property, the Court had

\* Small Cause Court Reference, No. 846 of 1878, from an order made by Baboo Baroda Prosuuno Shome, Sudder Munsif of Zilla Tipperah, dated the 11th June 1878.