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appraise and make a division of the crops as between two private persons who are to pay him for his services. Under these circumstances we think that this conviction should not be sustained, and this rule should be made absolute to set it aside.

*Conviction set aside.*

T. A. P.

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice Amecr Ali.*

GOSSAIN DALMAR PURI (PLAINTIFF) v. BEPIN BEHARY  
 MITTER AND ANOTHER (DEFENDANTS).\*

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 April 24.

*Limitation Act (XV of 1887), Schedule ii, Art. 144—Symbolical possession.*

The plaintiff Gossain Dalmar Puri's predecessor in title, one Gossain Lachmi Narain Puri, acquired the share of 2 annas and 8 pies in certain mouzahs by purchase at a sale held in execution of his own decree against one Het Narain Singh, and in September 1874 obtained symbolical possession.

In December 1874, Het Narain Singh and his co-sharers granted a perpetual lease to one Gokulanund, reserving a nominal rent. Subsequently Gossain Lachmi Narain Puri brought a suit for possession of the 2 annas and 8 pies share against Het Narain Singh and his co-sharers, and after the death of Gossain Lachmi Narain Puri, Gossain Dalmar Puri obtained a decree. In March 1882, Gossain Dalmar Puri obtained symbolical possession in execution of that decree.

On the 29th January 1887, Bepin Behary Mitter purchased at a sale in execution of a decree against Gokulanund, the right of the latter as lessee, and obtained, through the Court, symbolical possession of the same.

Gossain Dalmar Puri then instituted this suit to recover possession of the said 2 annas and 8 pies share against Bepin Behary Mitter and Gokulanund in December 1887, that is, 13 years after the grant of the lease by Het Narain Singh and his co-sharers to Gokulanund. The defence set up was limitation.

*Held*, that the suit was barred by limitation.

*Held* also, that when the lease purports to be a perpetual lease without reversion to the grantors, and no rights reserved to them, but only

\* Appeal from Appellate Decree No. 1814 of 1889 against the decree of J. Crawford, Esq., Judge of Gya, dated the 10th of August 1889, reversing the decree of Baboo Amrita Lal Pal, Subordinate Judge of Gya, dated the 13th of December 1888.

nominal rent, symbolical possession as against the grantors would not be effective against the lessee, and thus save the bar in limitation.

*Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (1) referred to.

In this case one Gossain Lachmi Narain Puri, the predecessor in title of the plaintiff Gossain Dalmar Puri, in execution of his own decree, on the 15th of November 1873, purchased the share of the judgment-debtor, one Het Narain Singh, in mouzah Rampore Balwa and other mouzahs. Gossain Lachmi Narain Puri then obtained a sale certificate on the 26th of July 1874, and on the 30th of September of the same year obtained, through the Court, symbolical possession.

Subsequently he instituted a suit, alleging that he was dispossessed, against Het Narain Singh and his co-sharers for the recovery of possession of his aforesaid share. On the 31st of March 1881, after the death of Gossain Lachmi Narain Puri, his disciple and successor, the plaintiff Gossain Dalmar Puri, obtained a decree for the 2 annas and 8 pies share which had belonged to Het Narain Singh, and on the 15th of March 1882 obtained, through the Court, symbolical possession.

In the meantime, that is to say on the 4th of December 1874, Het Narain Singh and his co-sharers had given a permanent lease to one Gokulanand. In execution of a decree against Gokulanand, his leasehold interest was sold to one Bepin Behary Mitter, who on the 29th of January 1887 took delivery of possession of the same.

This suit was brought by the plaintiff, on the 7th of December 1887, against Bepin Behary Mitter and Gokulanand to recover possession with mesne profits of the 2 annas and 8 pies share in the aforesaid mouzahs. The main defence was that the plaintiff's suit was barred by limitation.

The first Court was of opinion that Gokulanand's possession was not adverse to the plaintiff. That Court further held that the symbolical possession obtained by the plaintiff of the disputed share of 2 annas and 8 pies, on the 15th of March 1882, was possession not only as against Het Narain Singh and his co-sharers, but as against Gokulanand also, who claimed through them, and that such delivery of possession saved this suit from limitation even

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if Gokulanand's possession was adverse. He, therefore, decreed the plaintiff's suit.

The lower Appellate Court differed from the conclusions arrived at by the first Court, and held that Gokulanand's possession was adverse to the plaintiff's rights; and that inasmuch as the defendants "set up their own title to a leasehold right adversely to the plaintiff's right to immediate possession, and they have maintained their possession for all these years, and in spite of the symbolical possession taken under the previous suit," the suit was barred under article 144 of the second schedule to the Limitation Act.

The plaintiff preferred a special appeal to the High Court.

Mr. Woodroffe, Baboo Karuna Sindhu Mukerji, and Baboo Jogender Chundra Ghose, for the appellant.

Mr. Evans and Baboo Atul Krishna Ghose for the respondents.

Baboo Karuna Sindhu Mukerji, for the appellant.—The respondent, Bepin Behary Mitter, who purchased the interest of Gokulanand, was bound by the decree against the lessor, Het Narain Singh, and the symbolical possession obtained under it on the 13th of March 1882. Symbolical possession cannot give a fresh starting point against third persons only, viz., persons claiming an equal right with the appellant—*Juggubundhu Mukerjee v. Ram Chunder Bysack* (1), *Juggubundhu Mitter v. Purnanund Gossami* (2). The decree against the lessor could not be wholly infructuous. The appellant's title against the lessor was not barred according to the Full Bench decisions. His possession was through his lessee. If the suit was barred against the lessee, it would be barred against the lessor also. Further, unless it was found that the respondents held the lease with the knowledge of the appellant for more than twelve years, the appellant's suit could not be held to be barred by limitation—*Petamber Baboo v. Nilmony Singh Deo* (3), *Ram Chunder Singh v. Madho Kumari* (4), *Tekaetnee Goura Coomaree v. Saroo Coomaree* (5).

(1) I. L. R., 5 Calc., 584; 5 C. L. R., 548.

(2) I. L. R., 16 Calc., 530.

(3) I. L. R., 3 Calc., 793.

(4) I. L. R., 12 Calc., 484.

(5) 19 W. R., 253.

Mr. *Evans*, for the respondents.—The symbolical possession taken by the appellant in September 1874 extinguished the title and possession of Het Narain Singh in the disputed mouzahs. The right and possession of Het Narain Singh being extinguished, the respondent No. 2 entered into possession, alleging a grant from Het Narain Singh and his co-sharers. This possession was adverse to the appellant—*Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (1). Adverse possession is defined to be possession by a person holding on his own behalf, or on behalf of some person other than the true owner, the true owner having a right to immediate possession. Hence the respondent No. 2 and his representatives in title, not having been sued within twelve years, were in the position of third parties holding adversely. The symbolical possession, therefore, obtained by the appellant on the 15th of March 1882, against Het Narain Singh and his co-sharers, gave no fresh start as contended for by the appellant—*Juggobundhu Mitter v. Purnanund Gossami* (2). The case of *Ram Chunder Singh v. Madho Kumari* (3) does not apply to the present case. It has been held that where the right of a tenant depended upon trespass, and was not recognised by the true owner of the land, the tenant was at liberty to plead adverse possession—*Dinomoni Dabea v. Doorgapersad Mozoomdar* (4); and the same rule has been followed by the Bombay Court in *Muidin Saiba v. Nagapa* (5). The appellant not having sued the respondents within twelve years from the date of the origin of his title, his remedy was barred by limitation.

Babu *Karuna Sindhu Mukerji* replied.

The judgment of the Court (TOTTENHAM and AMEER ALI, JJ.) was delivered by—

TOTTENHAM, J. (AMEER ALI, J., concurring).—In this case the lower Appellate Court has differed from the first Court in holding that the suit is barred by limitation, and we have to decide whether the District Judge was right or wrong.

(1) I. L. R., 4 Calc., 327.

(2) I. L. R., 16 Calc., 530.

(3) I. L. R., 12 Calc., 484.

(4) 12 B. L. R., 274; 21 W. R., 70.

(5) I. L. R., 7 Bom., 96.

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The suit was brought to eject the defendants from a 2 as. 8 gs. share of a certain mouzah, and to obtain from them *mesne* profits in respect thereof. Plaintiff's predecessor in title acquired the share in question of the whole mouzah Rampore Balwa, of which the mouzah now in question is a "dakhili," by purchase at a sale held in execution of his own decree against his debtor, Het Narain Singh, and obtained formal possession through the Court on the 30th of September 1874.

In December 1874, Het Narain Singh, together with all his co-sharers in the mouzah, granted a perpetual mouroosi ticca of their "dakhili" to the defendant No. 2, reserving the almost nominal rent of Rs. 25 per annum.

Subsequently the plaintiff's predecessor brought a suit against all the maliks, including Het Narain, whose right had been sold to him, on the allegation that they had dispossessed him; and after his death the plaintiff recovered a decree for the 2 as. 8 gs. share which had been Het Narain's on the 31st of March 1881. In March 1882 he obtained formal possession in execution of that decree.

On the 29th of January 1887, defendant No. 1 having purchased at a sale, in execution of a decree against defendant No. 2, the right of the latter as ticcadar, obtained formal possession of the same through the Court.

Plaintiff complains that he was then dispossessed of the 2 as. 8 gs. share belonging to him; and he instituted this suit to recover it in December 1887—13 years after the grant of the ticca by Het Narain to the defendant No. 2.

The first Court was of opinion that the ticcadar's possession was not adverse to the plaintiff; and that he does not claim any right adverse to the plaintiff. That Court further held that the formal possession obtained by the plaintiff of the share now in dispute in 1882 was possession not only as against the defendants in that suit, but as against the ticcadar also who claims through one of those defendants, and that such delivery of possession saves this suit from limitation, even if the ticcadar's possession was adverse.

The Appellate Court, on the contrary, held that the ticcadar's possession was adverse to the plaintiff's right and that it had been

held "all these years," and therefore was sufficient to bar this suit under article 144 of the schedule to the Limitation Act.

My opinion is that the District Judge's decision is correct; and that although the ticcadar originally acquired no right whatever to that share of the mouzah which had, before the sale in 1874, belonged to Het Narain Singh, yet his possession immediately became adverse to the plaintiff; and that the latter cannot as against the ticcadar take any benefit from the formal possession obtained in execution of the decree of March 1881 to which the ticcadar was no party. The plaintiff himself has repudiated any relation of landlord and tenant as between himself and the defendant, and by his suit declares the possession of the latter to be adverse to his rights; and if that possession had been enforced for more than 12 years before this suit was brought, I do not see how the plaintiff can get rid of the bar of limitation. It might be more easy to do so if the ticcadar in question was a mere lessee of Het Narain Singh, and if there purported to exist any reversionary right in the latter. It might in such case be argued that the symbolical possession obtained by the plaintiff as against Het Narain in 1882 was equally effective as against one setting up to be his tenant or his ijaradar, and in possession on his account. But here the ticca purports to be a perpetual estate, with no reversion to the grantors, and no right reserved to them but the nominal rent of Rs. 25 per annum amongst them all. The Full Bench decisions *Juggobundhu Mukerji v. Ram Chunder Bysack* (1) and *Juggobundhu Mitter v. Purnanund Gossami* (2) cited for the appellant do not, in my opinion, govern the present case, in which, as I think, the defendant has been in adverse possession for more than 12 years before suit, and not on behalf of the party against whom the plaintiff obtained a decree in 1881 and got symbolical possession in execution of that decree. In the case of *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (3) this Court pointed out the distinction as regards a plea of limitation between a person holding as tenant for a term under a party in wrongful possession, and one holding as owner

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(1) I. L. R., 5 Calc., 534; 5 C. L. R., 548.

(2) I. L. R., 16 Calc., 530.

(3) I. L. R., 4 Calc., 327.

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and not as lessee on the term of paying a fixed sum annually to the former owner, although what he pays is called *rent*. And that distinction is one which I think must tell in favour of the defendant in the present suit.

The Privy Council decisions cited for the appellant—*Ram Chunder Singh v. Madho Kumari* (1) and *Tekaetnee Goura Coomaree v. Saroo Coomaree* (2)—do not seem to me to be applicable to this case. Those cases only show that a tenant cannot plead limitation in a contest with his landlord in respect of an adverse right as a perpetual tenure-holder except from the date when the landlord has had notice of such adverse claim. And this ruling does not further the plaintiff's case before us. I am of opinion that the defendant is entitled to raise the plea of limitation, and that the lower Appellate Court has properly found that the possession was always adverse to the plaintiff, and I would accordingly dismiss this appeal with costs.

*Appeal dismissed.*

A. F. M. A. R.

*Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.*

DAKHINA CHURN CHATTOPADHYA (DEFENDANT) v. BILASH CHUNDER ROY (PLAINTIFF).\*

1891  
June 11.

*Jurisdiction—Act VI of 1871, s. 18—Sale in execution—Local limits of jurisdiction under Act VI of 1871—Practice—Form of action.*

Where a District Judge, under the authority vested in him by section 18 of Act VI of 1871, has assigned to a Subordinate Judge the local limits of his particular jurisdiction, that officer can only exercise jurisdiction within such local limits.

*Obhoy Churn Coondoo v. Golam Ali* (3) and *Prem Chand Dey v. Mokhoda Debi* (4) followed.

THIS was a suit to set aside a sale held by the 2nd Subordinate Judge of Dacca on, amongst other grounds, the ground that the

\* Appeal from Original Decree No. 300 of 1889, against the decree of Baboo Beni Madhub Mitter, Subordinate Judge of Dacca, dated the 30th of August 1889.

(1) I. L. R., 12 Cal., 484.

(3) I. L. R., 7 Cal., 410.

(2) 19 W. R., 253.

(4) I. L. R., 17 Cal., 699.