

1877
 EDE
 v.
 KANTO NATH
 SHAW.

there is little doubt left, as there was there a verdict, on the plea of non-assumpsit, that the doctrine is not part of the law of evidence, but of substantive law; if it were, however, matter of evidence, the Evidence Act would have equally destroyed it.

Attorneys for the plaintiffs: Messrs. *Sen and Furr*.

Attorneys for the defendant: Messrs. *Remfry and Rogers*.

APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Birch.

1877
 Dec. 3.

GOSSAIN DASS CHUNDER (DEFENDANT) *v.* ISSUR CHUNDER NATH
 (PLAINTIFF).*

Title—Adverse Possession—Limitation.

Twelve years' continuous possession of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer.

Semle.—Such title may be transferred to a third person whilst it is in course of acquisition and before it has been perfected by possession.

Suits for possession distinguished from suits for declaration of a particular title.

Where a plaintiff seeks to recover possession of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also upon the ground of a twelve years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase.

IN this case the plaintiff sued to recover possession of a room and the use of a staircase in an undivided dwelling. He alleged that the house in question was the property of the defendant's maternal grandfather; that the defendant possessed half of the house, and that the other half was in the possession of Bhugobutty Dassia, the defendant's aunt; that the defendant sold his half share to the plaintiff's brother in the year 1850; that

* Appeal under cl. 15 of the Letters Patent, against the decree of R. C. Mitter, J., dated the 6th February, 1877, made in Special Appeal, No. 2030 of 1876, from the order of A. J. R. Bainbridge, Esq., Judge of East Burdwan, dated 29th July 1876, reversing the order of Baboo Promothonath Banerjee, Moonsiff of Kutwah, dated the 30th November 1875.

this half of the house fell to the share of the plaintiff at the time of partition with his brothers, and that the defendant, on the allegation of a purchase of Bhugobutty Dassia's half share, dispossessed the plaintiff of the room and staircase, the subject of this suit.

1877
 GOSSAIN DASS
 CHUNDER
 v.
 ISSUR
 CHUNDER
 NATH.

Baboo *Kassihant Sein* for the appellant.

Baboo *Sreenath Dass* for the respondent.

GARTH, C. J.—We think there is no ground for this appeal.

The plaintiff sued to recover possession of certain rooms in a house, the whole of which he admits to have once belonged to the defendant, but which he says were sold by the defendant to his (the plaintiff's) brother in the year 1857 or 1858, and afterwards fell to the share of the plaintiff in a partition which took place between him and his brother many years ago.

The evidence of the purchase of the property from the defendant was so weak, that it was rejected altogether by the Munsif (who found in the defendant's favor) and not relied upon by the District Judge (who reversed the Munsif's judgment, and found in favor of the plaintiff). This judgment of the District Judge is based upon the ground that, although the plaintiff may not have legally established the purchase from the defendant in 1857, he has proved that he has been in possession of the property in question for upwards of twelve years, and this is in fact admitted by the defendant, whose case is, that during that time the plaintiff paid rent to the defendant's mother's sister.

The District Judge, under these circumstances, considered, that the plaintiff had made out a *prima facie* case, by showing that he had been in possession for upwards of twelve years, and that the onus of proving that the plaintiff paid rent during that time, as alleged by the defendant, was upon the defendant. He has further found that, notwithstanding the purchase of the property by the plaintiff was not established, the plaintiff was entitled to a decree for possession upon the strength of his twelve years' possession.

The learned Judge in this Court was of opinion, that the

1877

GOSAIN DASS
CHUNDER
v.
ISSUR
CHUNDER
NATH.

District Judge was right in so holding, and we quite agree with him.

The plaintiff's case in the first instance was founded not only upon the fact of purchase from the defendant by the plaintiff's brother, but also upon his long possession of the property for upwards of twelve years. The purchase he failed to prove, but the twelve years' possession was established, not only by the plaintiff's evidence, but by the defendant's own admission. It is true that this admission was accompanied by the counter-statement by the defendant, that during the twelve years the plaintiff had paid rent to the defendant's aunt, but the onus of proving this statement was upon the defendant, and he entirely failed to prove it.

We have, therefore, a possession by the plaintiff established for upwards of twelve years before the defendant's dispossession, and there is ample authority that such continuous possession for upwards of twelve years not only (in the language of the Privy Council in the case of *Gunga Gobind Mundul v. Collector of the 24-Pergunnahs* (1) bars the remedy, but practically extinguishes the title of the true owner in favor of the possessor.

The construction which this Court has given to the law thus laid down by the Privy Council, is not only that a twelve years' possession by a wrong-doer extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer—see *Amir-unnissa Begum v. Umar Khan* (2) and *Ram Lochun Chuckerbutty v. Ram Soonder Chuckerbutty* (3); and this Court has gone still further, because it has held, that the title of the wrong-doer can be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by a twelve years' possession—see *Brindabun Chunder Roy v. Tarachand Bandopadhya* (4). Whether the law as laid down by the Privy Council was meant to have this extended operation, may perhaps be doubted, but such a construction of it tends to convenience in this country, and we are certainly not disposed to question its correctness as applied to the present case.

(1) 11 Moore's I. A., 345.

(3) 20 W. R., 104.

(2) 8 B. L. R., 540; S. C., 17

(4) 11 B. L. R., 237; 20 W. R., 114.

W. R., 119.

It was strongly contended by the appellant that the plaintiff's suit ought not to have been decreed, because he did not establish his right in the precise way in which it was claimed, and the cases of *Bijoya Debia v. Bydonath Deb* (1) and *Ramcoomar Shome v. Gunga Pershad Sein* (2) were relied upon in support of that contention. But these cases were very different from the present. They were cases in which the plaintiffs prayed for a declaration by the Court that they held their land upon a particular title, and as they had failed to establish that particular title, it was impossible of course that the Court could say that they were entitled to it.

Here the plaintiff asks for no declaration of title. He seeks to recover possession of property of which he has been dispossessed by the defendant, upon the strength, no doubt, of a purchase made by him, which he has not proved, but also upon the strength of a twelve years' possessory title, which he has proved, and upon which, for the reasons that we have already given, he is entitled to succeed.

The appeal is dismissed with costs.

Appeal dismissed.

(1) 24 W. R., 444.

(2) 14 W. R., 109.

1877
 GOSSAIN DASS
 CHUNDER
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 CHUNDER
 NATH.