1886

HUKUM CHAND ASWAL v. GYANENDRA CHUNDER LAHIRI.

An appeal was preferred to the High Court.

Baboo *Durga Mohun Das* for the appellant.

Baboo *Grija Sunkar Mozoomdar* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows:—

MITTER, J.—This is an appeal against the decisions of the lower Courts passed in execution of a decree which was transferred from the Civil Court in Cooch Behar.

The lower Courts have decided that the decree is barred by limitation, but we are of opinion that they had no jurisdiction to execute the decree in question. There is no provision in the Code of Civil Procedure under which a Court in British India is competent to execute a decree transferred to it by any Court in a Native State out of British India.

That being so, the decree-holder, who is the appellant before us, has mistaken his remedy. The application for execution should have been dismissed on the ground that the Courts in British India have no power to execute a decree passed by the Courts of a Foreign State.

The appeal will therefore be dismissed with costs.

K. M. C. *Appeal dismissed.*

Before Mr. Justice Mitter and Mr. Justice Grant.

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April 8.

PRANNATH SHAHA AND ANOTHER (PLAINTIFFS) *v.* MADHU KHULU AND OTHERS (DEFENDANTS.)*

Landlord and Tenant—Suit for ejectment—Cause of action—Landlords' title, Denial of—Written statement.

P and *R* brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain *jote*, and that a notice to quit had thereupon been served on them. The defendants (tenants) in their written statement denied the landlords' title. The lower Courts found that the *jote* belonged to the plaintiffs, and the defendauts had been and still were in possession of the same as tenants; but dismissed the suit on the ground that the service of notice had not been proved.

Held (on second appeal) that, inasmuch as the cause of action must be based on something that accrued antecedent to the suit, the denial by the

* Appeal from Appellate Decree No. 2095 of 1885 against the decree of G. G. Dey, Esq., Judge of Pubna and Bograh, dated the 13th of August 1885, affirming the decree of Baboo Bepin Behari Mukherji, Munsiff of Pubna, dated the 2nd of April 1885.

defendants of their landlords' title in the written statement would not entitle the plaintiffs to a decree on the ground of forfeiture.

ON the facts stated as above, it was contended before the High Court, on the authorities of *Suttyabhama Dassee* v. *Krishna Chunder Chatterjee* (1), *Ishan Chunder Chattopadhya* v. *Shama Churn Dutt* (2), and *Baba* v. *Vishvanath Joshi* (3), that the defendants, by denying the title of the plaintiffs (appellants), had forfeited their tenancy, and proof of service of notice being, under the circumstances, immaterial, the plaintiffs were entitled to a decree.

Baboo *Kishori Mohun Rai*, for the appellants.

Baboo *Jadab Chunder Seal*, for the respondents.

The judgment of the Court (MITTER and GRANT, JJ.) was delivered by

MITTER, J.—This was a suit brought by the plaintiffs to recover possession of a piece of land which it is alleged was held by the defendants as their tenants.

The plaintiffs alleged that they called upon the defendants to come to a settlement with them in respect of the said land, and they say, as the defendants have refused to do so, they are entitled to evict them and get *khas* possession. They also alleged that they served the defendants with a notice to quit.

The Courts below have dismissed the plaintiffs' suit upon the ground that no notice to quit is proved to have been served upon the defendants.

It is contended before us that the Courts below were not right in dismissing the suit upon that ground, because the defendants in this case alleged that they were not the tenants of the plaintiffs; and if it were found that they were not, no notice to quit would have been necessary.

We are of opinion that this contention is not valid. If it should be found that the defendants were not the tenants of the plaintiffs, the plaintiffs' suit would be liable to be dismissed upon the ground that they have not established any cause of

(1) I. L. R., 6 Calc., 55. (2) I. L. R., 10 Calc., 41.
(3) I. L. R., 8 Bom., 228.

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action. Their cause of action was that the defendants were their tenants; that they called upon the defendants to settle for the lands; that they refused to do so; that they then served upon them a notice to quit; and that, as they have not quitted the land, the plaintiffs are entitled to evict them and get *khas* possession, so that, if it were once found that the defendants were not the plaintiffs' tenants, their plaint as framed would disclose no cause of action against the defendants for possession.

It was contended before us that the plaintiffs might have been able to prove some other cause of action at the trial. But the answer to that is, that they would not be allowed to prove a cause of action different from the one set up in the plaint.

In point of fact, no other cause of action was alleged or proved upon the evidence that was taken. We asked the learned pleader, who argued the case before us, to point out any evidence showing that the plaintiffs were in possession otherwise than through the defendants as their tenants, but he admitted that there was no such evidence. Consequently, we may take it that the plaintiffs attempted to prove the cause of action which they set up, and *that* they could not do unless it were proved that notice had been served upon the defendants.

It was further contended that, although no notice was served upon the defendants, the plaintiffs were still entitled to a decree for ejectment, inasmuch as the defendants had, by their conduct in denying in their written statement the plaintiffs' title, forfeited their tenant right.

We are of opinion that this contention also is not valid. The plaintiffs' cause of action must be based on something that accrued antecedent to the suit. The fact that the defendants in their written statement denied their tenancy under the plaintiffs would not give the plaintiffs a cause of action upon which to found their suit.

The learned Vakil for the appellant referred us to three cases in support of his contention. The first is *Suttyabhama Dassee* v. *Krishna Chunder Chatterjee* (1). The cause of action in that case was, that the defendant, the tenant, had denied the landlord's title before the institution of the suit, and the Munsiff, upon the evidence adduced in that case, found that to be the case, and this

(1) I. L. R., 6 Calc., 55.

Court, in confirming the Munsiff's decision, held that this denial of the landlord's title gave the landlord a right to evict the tenant. It is true that the Judges who decided that case also refer to the further denial of the plaintiff's, the landlord's, title contained in the written statement, but that was done merely with the view of showing that the conduct of the defendant had been throughout such that the Court could not take an equitable view of the case and interfere to prevent the forfeiture which he had incurred by denying his landlord's title from taking effect. The next case is *Ishan Chunder Chattopadhya* v. *Shama Churn Dutt* (1). There, the denial was by one of four defendants, and the learned Chief Justice, in delivering judgment, held that the denial by that one defendant was made on behalf of all, and that it therefore gave the plaintiff, the landlord, a right to bring a suit, upon that denial, against them all. The last is *Baba* v. *Vishvanath Joshi* (2), but that case does not touch the point now before us, which is, whether the denial of a landlord's title by way of defence to an action of ejectment works a forfeiture. That case was decided upon the ground that, as the defendant had set up a permanent title, and had failed to prove it, the landlord was entitled to recover possession. No question of the defendant (the tenant) having forfeited his right in the tenure by denying the landlord's title in his written statement was raised or decided in that case.

We are, therefore, of opinion that these cases do not support the contention of the learned Vakil.

The appeal will be dismissed with costs.

K. M. C. *Appeal dismissed.*

(1) I. L. R., 10 Calc., 41.
(2) I. L. R., 8 Bom., 228.