Before Mr. Justice Rampini and Mr. Justice Pratt.

PARAMESWAR NOMOSUDRA (DEFENDANT) *v.* KALI MOHUN NOMOSUDRA (PLAINTIFF).*

1900 *August* 24.

Limitation—Bengal Tenancy Act (VIII of 1885), sch. III, art. 3—Suit for recovery of possession by an occupancy raiyat—Dispossession by landlords, fractional, sole, or entire body of—Occupancy raiyat.

The period within which an occupancy raiyat can sue to recover possession of land from which he has been dispossessed by his landlord, is two years as laid down in art. 3, sch. III of the Bengal Tenancy Act, whether such dispossession be by a fractional landlord, the sole landlord, or the entire body of landlords.

Joolmutty Bewa v. *Kali Prasanna Roy* (1) referred to.

THIS was a suit for declaration of the plaintiff's right to a holding and for recovery of possession of the same. The plaintiff

* Appeal from Appellate Decree No. 1071 of 1898, against the decree of Babu Mohendra Nath Roy, Subordinate Judge of Mymensingh dated the 21st of January 1898, reversing the decree of Babu Brojendra Lall Dey Munsiff of Kishoregunge, dated the 23rd of December 1896.

(1) JOOLMUTTY BEWA AND OTHERS (PLAINTIFF) *v.* KALI PRASANNA ROY AND OTHERS (DEFENDANTS). ‡

Limitation—Bengal Tenancy Act (VIII of 1885), sch. III, art. 3—Suit by occupancy raiyat for recovery of possession of land after dispossession by landlord—Dispossession at the instigation of co-sharer landlord.

THIS suit was instituted for recovery of possession of certain land from which the plaintiff, an occupancy raiyat, was dispossessed by the defendants Nos. 1, 2 and 3 at the instigation of the defendant No. 4, who was a co-sharer landlord.

The defendants pleaded that the land in suit did not appertain to the taluq, of which the defendant No. 4 was a co-sharer, but it belonged to a taluq of which the defendant No. 4 was the sole proprietor, and that he had let the land in question to the defendants, Nos. 1, 2 and 3, who were in possession of the same as his tenants.

‡ Appeal from Appellate Decree No. 1513 of 1892, against the decree of C. M. W. Brett, Esquire, District Judge of Dacca, dated the 22nd of June 1892, affirming the decree of Babu Mohendra Nath Roy, Munsif of Manikgunge, dated the 13th of November 1891.

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alleged that it belonged to his father Kancha Changa, and that after his father's death, he let it out in *burga* to one Fedu Changa whom the defendants forcibly dispossessed.

The defendant No. 3 contended that the plaintiff not being in possession of the land in dispute within twelve years of the institution of the suit the claim was barred by limitation; and he further alleged that before the partition of the original taluq comprising the land in suit, he having been a part-proprietor of the said taluq was holding some land as *khamar* and some as *jote;* and after the partition the land in dispute having been included in another *malik's* share, he continued in possession of the disputed

Both the Lower Courts were of opinion that the claim was barred by limitation as prescribed by sch. III, art. 3, of the Bengal Tenancy Act, and they accordingly dismissed the suit.

The plaintiff appealed to the High Court.

1893, AUGUST 8. Dr. *Rash Behary Ghose*, Babu *Saroda Charan Mitter*, and Babu *Sarat Chunder Roy*, for the appellant.

Babu *Harendra Narayan Mitter* for the respondents.

Cur. adv. vult.

1893, AUGUST 15. The Court (TREVELYAN and RAMPINI, JJ.), owing to some conflicting decisions of the Court on the question of limitation involved in this case, referred the appeal under Rule 2, Chap. V of the High Court Rules, for the final decision of a Full Bench, in the following terms:—

"This appeal is against a decree of the District Judge of Dacca, who has held the plaintiff's suit to be barred by limitation.

"The plaintiff alleges that he is the occupancy raiyat of certain land; that the defendant No. 4 is one of their landlords (*i. e.* a co-sharer landlord); and that he, with the assistance of defendants Nos. 1, 2, and 3 has dispossessed the plaintiff from the land, or rather that the defendants Nos. 1, 2 and 3 at the instigation of defendant No. 4 have dispossessed him. It is admitted that the defendants Nos. 1, 2 and 3 are in possession of the land. In these circumstances the plaintiff seeks to recover possession of the land.

"The defence is that the land in dispute does not appertain to the taluq of which the defendant No. 4 is a co-sharer landlord. It is said it belongs to a taluq of which the defendant No. 4 is alone the proprietor, and that he has let the land to the defendants Nos. 1, 2 and 3, who are now in possession of it as his tenants.

"The Lower Courts have dismissed the suit, holding that it is barred by the two years' rule of limitation as prescribed by art. 3, sch. III of the Bengal

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land in *jote* right under the said *malik* by whom the plaintiff was dispossessed; and he (the plaintiff) not having brought this suit within two years of such dispossession his claim was also barred by limitation as specially prescribed by art. 3, sch. III of the Bengal Tenancy Act. He also alleged that the plaintiff abandoned the *jote* after the death of his father some fifteen or sixteen years ago.

The Court of First Instance was of opinion that the claim was barred by the twelve years' rule of limitation, and it dismissed the suit.

The Subordinate Judge, on appeal, held that the suit was not barred by twelve years' limitation, nor had the two years' rule of limitation any application to this case, it not being "a case of dispossession by the landlord nor by the entire body of landlords," and he accordingly decreed the plaintiff's suit.

Tenancy Act for suits to recover possession of land claimed by the plaintiff as an occupancy raiyat.

"In appeal it has been contended before us that the decision of the Lower Court is wrong, inasmuch as in the cases of *Ramjanee Bibee* v. *Amoo Beparee* (1) and *Chunder Kishore Dey* v. *Rajkishore Mozumdar* (2) it has been held that this rule of limitation only applies to suits brought by a raiyat against his landlord, and not to suits brought against third parties. In the former of these cases it is said the rule does not apply to suits brought against a third party who is a trespasser, but this must mean a trespasser as regards the plaintiff or one who is alleged to be a trespasser, as in both of these cases the defendants, in possession of the disputed holding, were alleged to hold them as tenants under the plaintiff's landlord, and in the former case the defendant was found to hold as tenant under the landlord. Now, if these rulings be followed it would appear that the present suit is barred as against defendant No. 4, but not as against defendants Nos. 1, 2 and 3, which is very anomalous.

"On the other hand the case of *Saraswati Dasi* v. *Horitarun Chuckerbutti* (3), and that of *Ramdhan Bhadra* v. *Ram Kumar Dey* (4), have been relied

(1) (1888) I. L. R., 15 Calc., 317.
(2) (1888) I. L. R., 15 Calc., 450.
(3) (1899) I. L. R., 16 Calc., 741.
(4) (1890) I. L. R., 17 Calc., 926.

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The defendant appealed to the High Court.

Babu *Gobinda Chunder Dey Roy* for the appellant.

Babu *Dwarka Nath Chakravarti* for the respondent.

The judgment of the Court (RAMPINI and PRATT, JJ.) was delivered by

RAMPINI, J.—This is an appeal against a decision of the Subordinate Judge of Mymensingh, dated the 21st January 1898.

The suit was one for recovery of possession of a *jote* after establishing the plaintiff's right to the same. The plaintiff alleged that the *jote* belonged to his father, that, after his father's death, he let it out in *burga* to one Feda Changa, and that the defendants had forcibly dispossessed his *burgadar*.

on, and it has been pointed out that in the latter an opinion has been expressed that all suits for recovery of possession wherein an occupancy right may be claimed are to be governed by the limitation prescribed in art. 3, sch. III of the Bengal Tenancy Act. This view has been supported by a reference to the report of the Select Committee on the Bengal Tenancy Act, in which it is said : "We consider that a moderately short period of limitation should be fixed for the recovery by an occupancy raiyat of land comprised in his holding, and following the precedent prescribed by s. 81 of the Central Provinces Tenancy Act, 1881, we have fixed the period at two years from the date on which he is ejected."

"But this expression of opinion appears to be only an *obiter dictum* as the defendants in the case of *Ramdhan Bhadra* v. *Ram Kumar Dey* (1) were the landlords only, and not the tenants put in possession of the land by the landlords. An unreported judgment (in appeal from appellate decrees Nos. 295 and 296 and 545 to 556 of 1892, and Rule No. 282 of 1893 disposed of on the 21st April 1893, by GHOSE and GORDON, JJ.) has also been cited to us.

"The facts of the case dealt with in that judgment are similar to those of the present case, both the landlord and the persons to whom the landlord had let the land being made parties defendant. In these cases the learned Judge of the Lower Appellate Court had held, as contended by the appellant in this case, that the suits were barred as against the landlord by the two years rule,

(1) (1890) I. L. R., 17 Calc., 926.

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The defendant No. 3 alone contested the suit; and he urged that the suit was barred by the two years' rule of limitation, and also by the twelve years' rule of limitation, and that the plaintiff abandoned the *jote* on the death of his father.

The Courts below have held that the plea of abandonment has not been established. But the lower Appellate Court has found that the suit is not barred by the twelve years rule of limitation, and that the two years' rule has no application.

The defendant No. 3 appeals; and his contention is that the two years' rule of limitation, laid down in art. 3, of sch. III of the Bengal Tenancy Act, does apply as he is a fractional

but not against the other defendants, to whose case the twelve years rule applied. The learned Judges of this Court remanded the suit to the Lower Court in order that it might find explicitly, whether the plaintiff had been dispossessed by the landlord or by the other defendants, that is, the persons in actual possession of the land. If it were found that the landlord defendant had really leased the land to the other defendants, and they had dispossessed them, then, it was said, the decree already passed by the learned District Judge should be affirmed. But if it were found that the leases were only nominal leases, and that the act of dispossession was really the act of the landlord, then the period of two years' limitation would be applicable to all the defendants.

"It will thus be seen that the law on this point is in an unsatisfactory state. If we follow the two cases of *Ramjanee Bibee* v. *Amoo Beparee* (1) and *Chunder Kishore Dey* v. *Rajkishore Mozumdar* (2), we must hold that this suit is barred by limitation as against defendant No. 4, but not as against defendants Nos. 1, 2 and 3, and must find that the plaintiff may recover from the defendants Nos. 1,2 and 3 what he cannot recover from the defendant No. 4, who has let the defendants Nos. 1, 2 and 3 into the land.

"If we follow the unreported decision of GHOSE and GORDON, JJ., we must similarly hold that there may be different periods of limitation in the same case for a landlord, and for the lessees of the landlord, and if we hold that the period applicable to all defendants is two years, provided that the landlord has dispossessed the plaintiff and subsequently inducted the other defendants into the land, this would seem to be *at variance with the ruling in Ramjanee*

(1) (1888) I. L. R., 15 Calc., 317.
(2) (1888) I. L. R., 15 Calc., 450.

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co-sharer landlord. He says that he owns a $2\frac{1}{2}$ *karas* share in the estate, in which the plaintiff holds the *jote*, and that, therefore, the plaintiff was bound to sue him within two years from the date of dispossession.

The learned Subordinate Judge on this point says: "The two years' rule has no application in this case. This is neither a case of dispossession by the landlord nor by the entire body of landlords." This somewhat sphinx-like utterance has been the subject of much discussion before us. It appears to be capable of several interpretations. It may be interpreted as meaning that the plaintiff was not dispossessed by the sole landlord, or by the entire body of landlords, but by a fractional co-sharer landlord, or it may mean that the plaintiff was dispossessed by a person who is not a landlord at all. The former of these interpretations is favoured by the appellant, and the latter by the respondent; and in support of the interpretation which he favours the learned pleader for the respondent has referred to paragraph

Bibee v. *Amoo Beparee* (1), in which the defendants were not to have dispossessed the plaintiff, but to have been let into the land by the landlord, and yet the period of limitation applicable was held to be twelve years.

"The case of *Ramdhan Bhadra* v. *Ram Kumar Dey* (2) would seem to us to lay down a more correct and logical rule and probably the one intended by the framers of the Tenancy Act, *viz.*, that in all cases of dispossession an occupancy raiyat must sue for possession within two years' time. But the ruling is an *obiter dictum* and moreover the learned Judge who delivered the judgment in which it occurs does not seem to have adhered to it, in the unreported case above referred to.

"In these circumstances, and, as we feel doubtful as to the correctness of the rulings in the cases of *Ramjanee Bibee* v. *Amoo Beparee* (1) and *Chunder Kishore Dey* v. *Raj Kishore Mozumdar* (3), we think it best to refer the matter to a Full Bench, which we accordingly do. The questions we would propound to be answered by the Full Bench are: (*a*) whether the period of limitation prescribed by art. 3, sch. III of the Bengal Tenancy Act applies only

(1) (1888) I. L. R., 15 Calc., 317.
(2) (1890) I. L. R., 17 Calc., 926.
(3) (1888) I. L. R., 15 Calc., 450.

2 of the defendant's written statement, in which the defendant states that he, having been a part *malik* of the said *taluq*, was holding some land as *khamar* and some as *jote*, and that, after partition, the land under claim having been included in the other *malik's* share, he continued in possession of the disputed land in *jote* right under the said *malik*, by whom the plaintiff was dispossessed. This, it is said, means that when the plaintiff was dispossessed, the defendant No. 3 had parted with his $2\frac{1}{2}$ *karas* interest in the land, and was holding the land in dispute only as a tenant under some of the other *maliks*. We are unable to feel certain as to which interpretation should be put upon the Subordinate Judge's words; and we must, therefore, remand the case to him for a clear finding as to whether the defendant, when he dispossessed the plaintiff, as we understand it has been found that he did, was a co-sharer landlord, or had parted with his interest as a landlord in the land. If the finding of the learned Subordinate Judge be that the defendant No. 3 was a co-sharer landlord, then, we think, there can be no doubt that the rule of limitation applicable is two years,

to suits brought by an occupancy raiyat for recovery of possession against his landlord, or whether it applies to all suits brought by an occupancy raiyat for recovery of possession of his holding; (*b*) does it make any difference as regards the period of limitation applicable whether the occupancy raiyat is dispossessed by the landlord defendant, who has placed the other defendants to the suit in possession of the land, or whether the landlord defendant has let the land to the other defendants, who have dispossessed the plaintiff with the landlord defendant's consent, but *without his physical* assistance?"

1894, FEB. 1. The judgment of the Full Bench (PETHERAM, C. J., PRINSEP, O'KINEALY, TREVELYAN, and GHOSE, JJ.) was as follows:—

In this case we think that the statement in the referring order which is taken from the plaint that the person who ejected the plaintiff from the land was the landlord really disposes of the question, and that the question whether the period of limitation mentioned in art. 3 of the 3rd sch. of the Bengal Tenancy Act applies to a person other than the landlord, does not arise in this case. In the result the appeal will be dismissed with costs.

B. D. B. *Appeal dismissed*

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as laid down in art. 3 of sch. III of the Bengal Tenancy Act. The rulings of this Court are to the effect that, when a landlord dispossesses his tenant, the two years' rule is applicable; and that would seem to us to apply to dispossession by a fractional landlord as well as to dispossession by the sole landlord or by the entire body of landlords. This, we think, has been already decided in the case of *Joolmntty Bewa* v. *Kali Prasanna Roy* (1) decided by a Full Bench of this Court on the 1st of February 1894, which case, however, has not been reported. But that case was one of dispossession by one of the co-sharer landlords; and it was held to be barred by the two years' rule of limitation, and although the Full Bench, to whom the case was referred by a Division Bench of this Court did not deal with the question referred to them by the Division Bench, they dismissed the appeal, and thereby affirmed the finding of the District Judge who had dismissed the appeal before him as barred by the two years rule of limitation, the dispossession, as we have said, being by one of several landlords. We have no hesitation in following that ruling. But even if the question had not been already decided, that is the view we would take.

The pleader for the respondent urges that the plaintiff's *jote* is a non-occupancy holding. But we think that this point was never raised in the Court below. The case in the Court below proceeded upon the assumption that the plaintiff's *jote* was an occupancy holding; and that we consider was what he pleaded it to be, because he said in his plaint that it was an ancestral *jote*, which was never denied by the defendants.

In these circumstances we set aside the decree of the Lower Appellate Court and remand the case to the Subordinate Judge to be disposed of in accordance with the above observations.

The costs will abide the result.

B. D. B. *Case remanded.*

(1) See *ante* p. 127.