APPELLATE CIVIL.

Before Mr. Justice Mookerjee and Mr. Justice Caspersz.

JOGENDRA NATH RAI
v.
BALADEO DAS.*

1907
Aug. 16.

Partition—Co-owners—Dispossession—Adverse possession—Constructive possession—Waste land—Limitation.

To effect a partition the property, if susceptible of division, must be transformed into estates in severalty and one of such estates assigned to each of the former occupants for his sole use and as his sole property.

Although co-owners cannot enforce a partition of a part only of the common lands, leaving the rest undivided, and although the entire property must be included in the partition, yet, if by mistake, or by consent of the co-owners acting innocently and fairly, a partition of a portion only of their estate has been made, whether by order of the Court or otherwise, there is no reason, why the Court should not grant a division of the remainder at the instance of one or more of the co-owners.

The conclusion is, therefore, irresistible that the effect of a decree in the partition suit was to leave untouched the joint title and possession of the parties (in the remainder) and that the present suit for recovery of joint possession may well be maintained.

Barnes v. *Boardman*(1) and *Cartmell* v. *Chambers*(2) referred to and *Jagatjit Singh* v. *Sarabjit Singh*(3) followed.

The fundamental rule is that the entry and possession of land under the common title of a co-owner will not be presumed to be adverse to the others, but will ordinarily be held to be for the benefit of all.

Ricard v. *William*(4), *Prescott* v. *Nevers*(5), *Doe* v. *Prosser*(6), *Doe* v. *Taylor*(7), *McClung* v. *Ross*(8) and *Clymer* v. *Dawkins*(9) referred to and approved of. *Mahomed Ali Khan* v. *Khaja Abdul Gunny*(10), *Baroda Sundari Deby* v. *Annoda Sundari Deby*(11), *Ujalbi Bibi* v. *Umakanta Karmokar*(12),

* Appeal from Appellate Decree No. 1982 of 1905, against the decree of H. Holmwood, District Judge of 24-Parganas, dated the 31st July 1905, reversing the decree of Saroda Prasad Sen, Munsiff of Sealdah, dated the 2nd February, 1905.

(1) (1892) 157 Mass. 479: s. c. 32 N. E. 670.
(2) (1899) 54 S. W. 362.
(3) (1891) I. L. R. 19 Calc. 159.
(4) (1882) 7 Wheaton. 107.
(5) (1827) 4 Mason 326: s. c. 19 Fed. Cas. 1286.
(6) (1774) 1 Cowper. 217.
(7) (1833) 5 B. & Ad. 575.
(8) (1820) 5 Wheaton. 116.
(9) (1845) 3 Howard. 674.
(10) (1883) I. L. R. 9. Calc. 774.
(11) (1898) 3 C. W. N. 744.
(12) (1904) I. L. R. 31 Calc. 970.

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Ittappan v. *Manavikrama*(1), *Mahesh Narain* v. *Nowbat Pathak*(2), *Jagar Nath Singh* v. *Jai Nath Singh*(3) and *Phani Singh* v. *Nawab Singh*(4) followed.

To prove title to land by adverse possession for the statutory period, it is not sufficient to show that some acts of possession have been done; the possession required must be adequate, in continuity, in publicity and in extent to show that it is possession adverse to the competitor; in other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the Statute of Limitation.

Radhamoni Debi v. *The Collector of Khulna*(5), followed. *Armstrong* v. *Monill*(6), and *Dos-well* v. *Dela Lanza*(7), referred to and approved of. *Leigh* v. *Jack*(8) and *Wali Ahmed Chowdhry* v. *Tota Meah Chowdhry*(9), referred to.

The doctrine of constructive possession applies only in favour of a rightful owner and must not as a rule be extended in favour of a wrong doer, whose possession must be confined to lands, of which he is actually in possession.

Mohini Mohan Roy v. *Promoda Nath Roy* (10), *Radha Govind Roy* v. *Inglis*(11), *Udit Narain Singh* v. *Golabchand Sahu*(12), *Ananda Hari Basak* v. *Secretary of State*(13) and *Vithaldas Kanjishet* v. *Secretary of State*(14), followed. *Hunnicut* v. *Peyton* referred to(15).

THE question raised by this appeal was as to whether a portion of land comprised in a certain holding in mouza Cossipur in the district of the 24-Parganas belonged to the plaintiffs jointly with the second and third defendants or whether the plaintiffs had lost their right, title and interest in the same through the adverse possession of these defendants.

It was admitted that the plaintiffs and the second and third defendants were co-owners of the holding and in 1884 under a decree in a partition suit a division was made of the land comprised in the holding, but not including the disputed portion, which by mistake of the parties and of the commissioner appointed to effect the partition, was omitted from the commissioner's report and from the list of lands in the final decree in the partition suit.

On the 22nd September 1892 a lease was executed by the tenant in favour of the respondents. The plaintiffs allege that

(1) (1897) I. L. R. 21 Mad. 153.
(2) (1905) I. L. R. 32 Calc. 837; s. c. 1 C. L. J. 437.
(3) (1904) I. L. R. 27 All. 88.
(4) (1905) I. L. R. 28 All. 161.
(5) (1900) I. L. R. 27 Calc. 943.
(6) (1871) 14 Wallace 145.
(7) (1857) 20 Howard 32.
(8) (1879) 5 Ex. D. 264.
(9) (1903) I. L. R. 31 Calc. 397.
(10) (1896) I. L. R. 24 Calc. 256.
(11) (1880) 7 C. L. R. 364.
(12) (1899) I. L. R. 27 Calc. 221.
(13) (1906) 3 C. L. J. 316.
(14) (1901) I. L. R. 26 Bom. 410.
(15) (1880) 102 U. S. 369.

in 1901 they were ousted by the second and third defendants, who took exclusive possession of the disputed land. The present suit was brought on the 11th June 1903 by the plaintiffs for recovery of joint possession with the second and third defendants. The first defendant set up the title of their landlord, the second and third defendants, who by way of their defence pleaded adverse possession for over 12 years and contended that the partition suit having dealt with the lands in the holding to be partitioned, the plaintiffs were not entitled to maintain the present suit.

In the original suit a decree was passed in favour of the plaintiffs by the Munsif of Sealdah. This decree was set aside and the judgment reversed by the District Judge of the 24-Pergunahs. Hence the present appeal by the plaintiffs to the High Court.

Babu Nilmadhub Bose (*Babu Surendra Chunder Sen* with him) for the appellants. Co-owners jointly entitled to land, on partition of the same, are not deprived with respect to each other of their right, title, or interest in a portion therein omitted by mistake of the parties to be dealt with in the partition proceedings; *Mohini Mohan Roy* v. *Promoda Nath Roy* (1), *Radha Gobind Roy* v. *Inglis*(2), *Watson & Co.* v. *Ramchund Dutt*(3).

Mr. C. C. Ghose (*Babu Provas Chunder Mitter* with him) for the respondents. The plaintiffs' appellants' proper remedy is to re-open the decree in the partition suit. They cannot proceed by way of a suit for recovery of joint possession of the omitted portion of land. I rely on Art. 127 in the second schedule of the Limitation Act (XV of 1877).

Cur. adv. vult.

MOOKERJEE AND CASPERSZ JJ. The subject-matter of the litigation, which has given rise to this appeal, is a parcel of land comprised in holding No. 129 in the khas mehal of the Government in Cossipur in the northern suburbs of Calcutta. The plaintiffs and the second and third defendants were admittedly

(1) (1896) I. L. R. 24 Calc. 256. (2) (1880) 7 C. L. R. 364.
(3) (1890) I. L. R. 18 Calc. 10.

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the owners of holding No. 129, in which the plaintiffs had a five-sixths share and the two defendants had an one-sixth share. In 1884 an action for partition was brought in the Court of the Subordinate Judge of the 24-Parganas in respect of this holding. The preliminary decree, by which the shares of the parties were determined, was made in due course, and a commissioner was appointed to effect a division by metes and bounds of all the lands comprised in the holding. By a mistake of the parties to the litigation, which was shared by the commissioner, the portion now in dispute was omitted from the report. As a matter of fact, this portion was, at the time, covered with jungle and was separated from the rest of the land by a ditch; the aspect of the locality indicated that the land now in dispute was not included in holding No. 129, which had been directed by the preliminary decree to be mapped out and partitioned. The result was that the final decree in the partition suit dealt with the lands of the holding, other than what is the subject-matter of controversy in the present litigation.

The plaintiffs allege that in 1901 the second and third defendants took exclusive possession of the disputed lands, ousted the plaintiffs, and settled the property with the first defendant. Under these circumstances, they commenced this action on the 11th of June 1903, for declaration of their title, for recovery of possession, and for partition. At a subsequent stage of the proceedings, the plaintiffs abandoned their claim for partition, and the plaint, as it now stands, is appropriate to a suit for recovery of joint possession. The claim also originally included a sum of Rs. 30 as compensation for damage done to trees. This part of the claim, however, was also subsequently withdrawn. The suit was contested by the first defendant as also by their landlords; the former set up the title of the second and third defendants, and the latter claimed a title by adverse possession for the statutory period; they also contended that, inasmuch as holding No. 129 had formed the subject matter of the previous suit for partition, the plaintiffs were not entitled to maintain the present action.

The Court of first instance held that the suit was maintainable, and that the title of the plaintiffs had not been extinguished

by adverse possession on the part of their co-sharers. In this view of the matter, a decree was made in favour of the plaintiffs. Upon appeal the learned District Judge has reversed this decision. He has found, upon the evidence, that the disputed land was waste at the time of the previous partition suit, and was omitted by mistake from the proceedings of the Commissioner, and, consequently from the final decree; but he has held that the plaintiffs never had a joint title to the land in dispute after the partition of 1884, and as they had failed to establish possession within 12 years of the suit, their claim must be dismissed.

The plaintiffs have now appealed to this Court, and, on their behalf, the decision of the District Judge has been challenged, substantially, on two grounds, *namely*, *first*, that in spite of what had happened in the suit for partition, the plaintiffs were entitled to have their joint title to the disputed property declared and to be placed in joint possession thereof: *secondly*, that inasmuch as the plaintiffs and the second and third defendants were co-owners, their title was not extinguished by adverse possession, as the defendants had failed to prove that there was a disclaimer by the assertion of a hostile title and notice thereof to the plaintiffs.

In support of the first point taken on behalf of the appellants, it has been argued by their learned vakil that, as the final decree in the partition suit admittedly did not deal with the disputed lands, the joint title of the co-owners was not, in any manner, affected thereby, and, as the exclusion from the partition decree was due to the mistake of the parties, the plaintiffs are not precluded from asserting their title to the property. It has been argued, on the other hand, by the learned counsel for the respondents that, as the preliminary decree directed the partition of all the lands comprised in holding No. 129, and consequently of the lands now in dispute, the proper and sole remedy of the plaintiffs appellants is to re-open the decree in the partition suit, where they might obtain the appropriate relief.

After careful consideration of the arguments, which have been addressed to us on both sides, we are of opinion that the contention of the appellants ought to prevail. In our opinion the

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effect of the decree in the partition suit was to leave unaffected the joint title and possession of the parties in the disputed land. It is obvious that there was no partition in fact, so far as these lands are concerned, for partition is the division made between several persons, of joint lands, which belong to them as co-proprietors, so that each becomes the sole owner of the part, which is allotted to him. The mere definition of the shares of the joint proprietors does not amount to partition of the property, although such determination may, as pointed out by their Lordships of the Judicial Committee in *Joy Narain Giri* v. *Girish Chunder Myti*(1) and *Chidambaram Chettiar* v. *Gauri Nachiar*(2), effect a severance of the joint interest. To effect a partition, however, the property, if susceptible of division, must be transformed into estates in severalty and one of such estates assigned to each of the former occupants for his sole use and as his sole property. If this view were not adopted, the very object of partition might be completely defeated; co-owners may desire to terminate their property relations with one another and thus avoid a continuance of that discord and irritation which must necessarily attend an association compelled by joint interest, but reprobated by every other consideration. If it were held that the mere determination of the shares by the preliminary decree was tantamount to partition, co-owners would have to enjoy their property jointly, which is precisely what they intend to avoid. If, therefore, we hold that the effect of the preliminary decree in the suit for partition was not to effect a partition of the disputed lands, it is clear that the effect of the final decree was unquestionably not to effect a partition; it is the common case of both parties that by a mistake the lands, now in dispute, were excluded from the report of the Commissioner and were not dealt with by the final decree.

How, then, can it be contended that the disputed lands were partitioned in the former litigation? One test seems to be conclusive; if the lands were partitioned, to the share of which co-sharer were they awarded? The learned counsel for the respondents found himself unable to furnish an answer to this question. He argued, however, that as the lands formed the subject matter of

(1) (1878) I. L. R. 4 Calc. 434.

(2) (1879) I. L. R. 2 Mad. 83 s. c. L. R. 6 I. A. 177.

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the previous litigation, the present action is not maintainable either for the recovery of joint possession or for partition. In our opinion, this contention is not well-founded on principle and is not supported by any authorities. A very similar question arose in the case of *Barnes* v. *Boardman*(1), which related to a partition of joint-property. It transpired in the course of the suit that an action had been previously brought for partition of an estate of which the disputed lands formed part; but that, by a mistake of the parties as to their legal rights, these lands had been excluded from the previous suit, in which the decree for partition was made in respect only of the land comprised in that action. It was argued on behalf of the defendants that, as the lands had not been included in the previous suit, they could not form the subject-matter of another litigation. This contention was overruled. Mr. Justice Knowlton, who delivered the judgment of the Supreme Judicial Court of Massachussetts, observed as follows:—"It is contended that the Court will not make an order for a partition of a part only of an estate held by tenants in common and that, therefore, when a partition has been made, which does not include all the lands that should have been included, the Court will not, in a new proceeding, do that which should have been done in the original suit. It is true that a petition for a partition of a part of an estate held by tenants in common will not be entertained against the objection of any person interested. Ordinarily, a petition of this kind should include the entire estate held in common, but it does not follow, *if by mistake* or *by the consent of all* the tenants, a partition has been made of a portion of their estate, whether by order of the Court, or otherwise, that the Court is powerless to divide the remainder on a petition of one or more of the tenants in common. It would be a harsh rule that, after a division of a part of an estate, partition of the remainder could never be ordered by the Court. When parties have acted innocently and fairly in making or obtaining a division, which does not cover all their estate, there is no reason why the law should not aid them, when they ask for a division of the remainder. The parties seem to have proceeded under a mistake in regard to their legal rights

(1) (1892) 157 Mass. 479; s. c. 32 N. E. 670.

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and nothing appears, on either side, to affect the right, which petitioners would have in any such case, if they had, by common consent, obtained the partition of a part of an estate held in common and subsequently found that a partition of the remainder of it was desirable."

This view appears to us to be consistent with principles of justice, equity and good conscience, and is supported by the decision in the case of *Cartmell* v. *Chambers*(1) and by the observations of their Lordships of the Judicial Committee in *Jagatjit Singh* v. *Sarabjit Singh*(2). We must, consequently, affirm, without hesitation, the doctrine that, although a co owner cannot enforce a partition of a part only of the common lands leaving the rest undivided, and, although the entire property must be included in the partition, yet, if by mistake or by consent of the co-owners, acting innocently and fairly, a partition of a portion only of their estate has been made, whether by order of the Court or otherwise, there is no reason why the Court should not grant a division of the remainder at the instance of one or more of the co-owners. The conclusion is, therefore, irresistible that the effect of the decree in the partition suit was to leave untouched the joint title and possession of the parties and that the present suit for recovery of joint possession may well be maintained.

The second ground taken on behalf of the appellants raises the question, whether their title has been extinguished by adverse possession on the part of their co-sharers, the second and third defendants. In our opinion, this question must be answered in the negative. The principles, which are applicable to cases of this description, in which the question arises as to whether the possession of one co-owner has been adverse to that of another, must now be taken to be well settled. The fundamental rule is that the entry and possession of land under the common title of one co-owner will not be presumed to be adverse to the others, but will ordinarily be held to be for the benefit of all. The obvious reason for this rule is that the possession of one co-owner is, in itself, rightful, and does not imply hostility as would the possession of a mere stranger. To use the language of Mr. Justice

(1) (1899) 54 S. W. 362. (2) (1891) I. L. R. 19 Calc. 159, 172.

Story in *Ricard* v. *Williams*(1) the law will never construe a possession tortious, unless from necessity; on the other hand, it will consider every possession lawful, the commencement and continuance of which is not proved to be wrongful, and this upon the plain principle that every man shall be presumed to act in obedience to his duty, until the contrary appears. In other words, as the same learned Judge put it in *Prescott* v. *Nevers*(2), the only difference between the possession of a co owner and other cases is that, acts, which, if done by a stranger would *per se* be a *disseisin*, are in the case of tenancies in common perceptible of explanation consistently with the real title; acts of ownership are not, in tenancies in common, acts of *disseisin*. It depends upon the intent with which they are done and their notoriety; the law will not presume that one tenant in common intends to oust another; the facts must be notorious and the intent must be established in proof." It follows consequently that one co-owner may hold adversely to his co-parcener, and, if his possession is continued uninterruptedly for the statutory period, he will acquire an indefeasible title (*Doe* v. *Prosser*(3), *Doe* v. *Taylor*(4).) This is true, whether the original entry was with intent to hold adversely or whether the entry was that of a tenant in common. Much stronger evidence, however, is required to show an adverse possession held by a tenant in common than by a stranger; a co-tenant will not be permitted to claim the protection of the Statute of Limitations, unless it clearly appears that he has repudiated the title of his co-tenant and is holding adversely to him; it must further be established that the fact of adverse holding was brought home to the co-owner, either by information to that effect given by the tenant in common asserting the adverse right, or there must be outward acts of exclusive ownership of such a nature as to give notice to the co-tenant that an adverse possession and *disseisin* are intended to be asserted; in other words, in the language of Chief Justice Marshall in *McClung* v. *Ross*(5), "a silent possession, accompanied with no act which can amount to an ouster or give notice to his co-tenant that his possession is

(1) (1882) 7 Wheaton 107.
(2) (1827) 4 Mason 326; s. c. 19 Federal Cases, 1286.
(3) (1774) 1 Cowper 217.
(4) (1833) 5 B. & Ad. 575.
(5) (1820) 5 Wheaton 116.

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adverse, ought not to be construed into an adverse possession;" mere possession, however exclusive or long-continued, if silent, cannot give one co-tenant in possession title as against the other co-tenant; see *Clymer* v. *Dawkins*(1), in which it was ruled that the entry and possession of one tenant in common is ordinarily deemed to be the entry and possession of all the tenants, and this presumption will prevail in favour of all, until some notorious act of ouster or adverse possession by the party so entering is brought home to the knowledge or notice of the others; when this occurs, the possession is from that period treated as adverse to the other tenants.

This view is identical with what has been adopted by this Court in the cases of *Mahomed Ali Khan* v. *Khaja Abdul Gunny*(2), *Baroda Sundari Deby* v. *Annoda Sundari Deby*(3), and *Ujalbi Bibi* v. *Umakanta Karmakar*(4). The same conclusion is supported by the case of *Ittappan* v. *Manavikrama*(5) and by the principles, which regulate the relation between joint owners, as explained in the case of *Mahesh Narain* v. *Nowbat Pathak*(6), *Jagar Nath Singh* v. *Jai Nath Singh*(7), *Phani Singh* v. *Nawab Singh*(8).

If, therefore, it is for the defendants to show not merely that they have been in sole occupation of the disputed lands, but also that there has been a disclaimer by the assertion of a hostile title and notice thereof to the appellants, either direct or to be inferred from notorious acts and circumstances, what is their position? The learned District Judge found that the circumstances, which put the plaintiffs to the knowledge of the infringement of their rights, was the execution of a lease by the tenants in favour of the respondents on the 22nd of September 1892. If so, the title of the plaintiffs was clearly in existence and was enforceable on the 11th of June 1903, when the present action was commenced. The difficulty in the way of the defendants respondents, however, does not terminate here. The facts found

(1) (1845) 3 Howard 674.
(2) (1883) I. L. R. 9 Calc. 774.
(3) (1898) 3 C. W. N. 744.
(4) (1904) I. L. R. 31 Calc. 970; s. c. 9 C. W. N. 32.
(5) (1897) I. L. R. 21 Mad. 153.
(6) (1905) I. L. R. 32 Calc. 887; s. c. 1 C. L. J. 437.
(7) (1904) I. L. R. 27 All. 88.
(8) (1905) I. L. R. 28 All. 161.

by the learned District Judge in his judgment show conclusively that the user of the land by them or their tenants was of a description, which could not possibly create in them a title by adverse possession to the whole of the lands now in controversy. As was observed by their Lordships of the Judicial Committee in the case of *Radhamoni Debi* v. *The Collector of Khulna*(1), to prove title to land by adverse possession for the statutory period, it is not sufficient to show that some acts of possession have been done; the possession required must be adequate in continuity, in publicity and in extent, to show that it is possession adverse to the competitor; in other words, the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the Statute of Limitation, or as was observed by Mr. Justice Clifford in *Armstrong* v. *Monill*(2) and by Mr. Justice Maclean in *Dos-well* v. *Dela Lanza*(3), the possession, in order that it may bar the recovery, must be continuous and uninterrupted as well as open, notorious, actual, exclusive and adverse. Judged by this test, the acts of possession proved on behalf of the defendants and their tenants fall far short of what would be necessary to extinguish the title of the appellants. The land was originally undoubtedly waste and continued to be so for many years; the neighbours and the persons employed in certain mills used the abandoned waste as a convenient place for the purposes of nature, and the first substantial use made by the defendants, which may in any sense be regarded as a hostile assertion of title on their part and ouster of the appellants, was within 12 years of this suit. There is nothing to show that beyond 12 years there were any positive acts referrable only to the intention of the defendants to acquire exclusive control of the disputed land; there were no acts, which could be regarded as adverse to the existing title. Indeed, they were not acts of possession at all; in other words to use the language of Bramwell L. J. in *Leigh* v. *Jack*(4), the acts of user were not enough to take the soil out of the plaintiff and vest it in the defendant, because in order to defeat a title by dispossessing the owner, acts must be done, which are inconsistent with his enjoyment of the

(1) (1900) I. L. R. 27 Calc. 93.
(2) (1871) 14 Wallace 145.
(3) (1857) 20 Howard 32.
(4) (1879) 5 Ex. D. 264.

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soil for purposes for which he intended to use it (see also *Wali Ahmed Chowdhry* v. *Tota Meah Chowdhry*(1), Pollock and Wright on Possession, page 86, and Lightwood on Possession, page 199).

There is another difficulty, no less formidable, in the way of the success of the defendant. The facts found by the Court below show conclusively that the possession of the defendants did not extend over the whole tract now in dispute; whatever acts of user they have proved, if indeed they be deemed to be acts of possession sufficient to extinguish the title of the plaintiffs, did not extend over the entire land. Now it was ruled by this Court in the case of *Mohini Mohan Roy* v. *Promoda Nath Roy*(2), that the doctrine of constructive possession applies only in favour of a rightful owner, and must not, as a rule, be extended in favour of a wrong-doer, whose possession must be confined to lands of which he is actually in possession. This principle is recognized in the cases of *Radha Gobind Roy* v. *Inglis*(3), *Udit Narain Singh* v. *Golabchand Sahu*(4), *Ananda Hari Basak* v. *Secretary of State*(5) and *Vithaldas Kanjishet* v. *Secretary of State*(6). That this doctrine is well founded on reason and principle is manifest, for as was observed by Mr. Justice Strong in *Hunnicut* v. *Peyton*(7), one, who enters upon the land of another, though under colour of title, gives no notice to that other of any claim, except to the extent of his actual occupancy; the true owner may not know the extent of the defective title asserted against him, and, if, while he is in actual possession of part of the land, claiming title to the whole, mere constructive possession of another, of which he has no notice, can oust him from that part, of which he is not in actual possession, a good title is no better than one, which is a mere pretence. Judged by this test also, the defendants have failed to prove that adverse possession on their part has extinguished the title of the plaintiffs. From every point of view, therefore, it follows that the plaintiffs are entitled to recover joint possession in the manner claimed.

(1) (1903) I. L. R. 31 Calc. 397.
(2) (1896) I. L. R. 24 Calc. 256.
(3) (1880) 7 C. L. R. 364.
(4) (1899) I. L. R. 27 Calc. 221.
(5) (1906) 3 C. L. J. 316.
(6) (1901) I. L. R. 26 Bom. 410.
(7) (1880) 102 U. S. 369.

The learned vakil for the appellants stated that he does not ask for a decree for ejectment as against the first defendant, who has been let into occupation of the land by the second and third defendants, who are co-sharers of the plaintiffs in the property. The plaintiffs are content to have a decree for declaration of title as against the first defendant and to be placed in joint possession as landlords along with their co-sharers.

The result, therefore, is that this appeal must be allowed, and the decree of the learned District Judge reversed. The plaintiffs will have a decree, which will declare their title to a five seventh share of the lands in dispute and will entitle them to recover joint possession thereof along with the second and third defendants. They will, however, not be entitled to eject the first defendant in execution of this decree.

It appears from the proceedings of the Courts below that a portion at any rate of the lands included in the present litigation is in the occupation of other persons, who are not parties to this suit and who apparently have encroached upon these lands as part of holding No. 115. It is, therefore, necessary to declare that the plaintiffs will not be entitled in execution of this decree to disturb the possession of such persons, if any, as are not parties to the present litigation. The plaintiffs are entitled to their costs in all the Courts.

Decree reversed.

O. M.