

(1880) 02 AHC CK 0009

Allahabad High Court

Case No: None

Sheo Prasad and
Another

APPELLANT

Vs

Udai Singh

RESPONDENT

Date of Decision: Feb. 25, 1880

Citation: (1880) ILR (All) 718

Hon'ble Judges: Straight, J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Pearson, J.

This purports to be a suit to obtain possession of landed property sold by the defendant to the plaintiffs on the 27th October 1865. On that date the vendor was not in possession of the property, although his title to it had been adjudged by a decree of the late Sudder Dewany Adawlat, North-Western Provinces, dated 9th August 1864, against which an appeal was pending before the Privy Council. But he obtained possession of the larger portion of the property on the 24th February 1870, and of the remainder on the 23rd August 1872, and the cause of action in this suit is that he has not put the plaintiffs in possession of it.

2. The lower Court has held the suit to be one for the specific performance of a contract to which Article 113, Schedule ii, Act XV of 1877, is applicable, and has dismissed the suit as barred by efflux of time, it having been instituted on the 5th October 1877, or more than three years after the dates above mentioned.

3. On examining the deed of sale, we find that it does not contain any express promise or undertaking on the vendor's part to put the vendees in possession. It recites that he has sold to them and received the sale-consideration, and goes on to declare that they, regarding themselves as the absolute proprietors thereof, Shall remain in possession of it from the date on which he may obtain possession of it in

execution of the decree aforesaid.

4. Such being the terms of the deed, the plaintiffs are not in a position to sue that the defendant may be compelled to put them in possession in fulfilment of a specific engagement to do so, nor is such the prayer of their plaint. As we have already observed, they sue to obtain possession in virtue of the right and title conveyed to them by the sale-deed.

5. In the 3rd paragraph of the plaint they say that the possession was agreed to be delivered "on the receipt of possession by the vendor," but, inasmuch as, there was not really any such express agreement, we must understand what they say to mean no more than that he was bound by an implied agreement to put them in possession.

6. Taking this view of the nature of the suit, we are unable to concur in the ruling that Article 113, [g.v. supra, II All. 518.] Schedule ii, Act XV of 1877, is applicable to it, and we rule that either Article 136 or Article 144 is applicable, and that, whichever of them be applicable, the suit is within time. (The judgment then proceeded to determine the appeal on its merits.)