

(1922) 07 CAL CK 0009**Calcutta High Court****Case No:** None

Jobeda Khatun

APPELLANT

Vs

Tulshi Charan Das

RESPONDENT

Date of Decision: July 27, 1922**Citation:** AIR 1923 Cal 82 : 77 Ind. Cas. 564**Hon'ble Judges:** Chotzner, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

1. This is an appeal by the first defendant in a suit for recovery of possession of land, with mesne profits, on declaration of title. The disputed property is a tenure situated in the eastern suburbs of Calcutta and held on payment of revenue to the Secretary of State. The holders of the tenure defaulted, with the result that it was sold on the 18th February 1902; for recovery of arrears of revenue, under Act XI of 1859. The plaintiff became the purchaser at that sale for a sum of Rs. 1,900, and his purchase took effect from the 29th June 1901, that is from the date when the last proprietor had defaulted. The sale was confirmed on the 2nd May 1902, the sale certificate was granted on the 21st June 1902 and the property was delivered to the purchaser on the 1st June 1903, by beat of drum in the customary manner. The property was in the occupation of tenants, and the case for the plaintiff is that for some years after his purchase he was in possession by receipt of rent from them, but that, in 1915, a suit for rent brought by him in the Court of Small Causes was dismissed, with the consequence that all the tenants gradually got out of hand and withheld their rents. According to the plaintiff, this result was brought about by one Abdur Rahaman, the fifth defendant, a leading tenant who was disappointed when he could not secure from him a farming lease of the entire property. The plaintiff thereupon instituted the present suit on the 20th May 1915, for declaration of his title by purchase and for recovery of possession with mesne profits. The first defendant, who contested the claim, was a lady, set up by the tenant-defendants as their landlord. She asserted that she was the real owner of the disputed property, that her title had not been affected by the revenue sale, and that the suit was barred by limitation.

inasmuch as she had been in possession by receipt of rent from 1895. The Subordinate Judge has held that the plaintiff acquired an unimpeachable title by purchase at the revenue sale, that he was in possession by receipt of rent, and that such possession continued to a date within twelve years prior to the institution of the suit. The Subordinate Judge has further held that the title set up by the defendant had no foundation in fact, that the story of her possession since 1895 was a myth and that hit interference with the enjoyment of the property by the plaintiff had not extended over 3 period of twelve years, In this view, the Subordinate Judge has decreed the suit. On the present appeal, the findings of the Subordinate Judge upon the question of title have not been controverted, and the argument has been restricted substantially to the question of limitation. It is plain, however, that when the evidence of possession is scrutinised, the history of the title cannot be ignored.

2. It is indisputable that a two-thirds share of the property in suit was purchased on the 22nd January 1881 by one Hanif (for the benefit of himself and his co-sharers) in the name of his mother Bipatti. The remaining one-third share was purchased in the inam of Hanif himself on the h January 1896. The first defendant is one of the four daughters of this Hanif. But she repudiates the title of her father and asserts that the tenure was owned by her father-in-law Hingu. According to her the property belonged at one time to Sukuranness, who was succeeded by her son Babr, from whom it passed by inheritance to his maternal uncle Hingu, who was the father-in-law of the defendant and made a verbal gift of the holding to her at the time of her marriage in or about the year 1895. The Subordinate Judge has pointed out that there is not a scrap of paper brought forward to support this story which he describes as "a tissue of falsehood of the blackest type." This view so emphatically expressed has not been assailed m behalf of the defendant-appellant in this Court. This course has been wisely adopted, for an examination of the record leaves no room for doubt that the Subordinate Judge had simple reasons to disbelieve the evidence adduced by the defendants. There is further the remarkable fact that while, after the revenue sale, Hanif took every conceivable step for its cancellation, on the allegation that he was the proprietor, there is no trace that the appellant interested herself in the matter in the remotest degree. We agree with the Subordinate Judge that Hanif and his co-sharers were the proprietors of the holding in suit at the time of the revenue sale, and that there is no foundation for the story that Hingu had made a gift thereof to the defendant in 1895. This conclusion is, no doubt, not necessary to support the title of the plaintiff, inasmuch as he acquired an indefeasible title to the tenure by his purchase at the revenue sale, whoever might have been the proprietor, at the time; but, as we shall presently see, the question of title has an important bearing upon the question of possession which must be investigated for the determination of the issue of limitation. In this connection, we may usefully re-call the rule enunciated by the Judicial Committee, in *Surja Kanta v. Sural Chandra Roy* 25 Ind. Cas. 309 PC : 20 C.L.J. 563 : 18 C.W.N. 1281 : 16 M.L.T. 290 : 27 M.L.J. 365, where Lord Atkinson observed as follows: "On the failure of an owner

to pay the Government assessment, his estate or interest in the land is forfeited or rather determined and under a sale for arrears of revenue what is sold is not the interest of the defaulting owner but the interest of the Crown, subject to the payment of the Government assessment, and, therefore, the time limited by the limitation Act only commences to run from the date of the sale." This principle was applied in a later stage of the same litigation, *Sashikanta Acharyya v. Sarat Chandra Rai Chaudhuri* 70 Ind. Cas. 6 PC: 34 C.L.J. 415, when it was ruled that a person in adverse possession who occupies the deputed laud without payment of rent to the defaulting proprietor, is bound to surrender possession of that land to the revenue sale purchaser where the sale is confirmed, and if the land is not so surrendered, he renders himself liable for mesne, profits, as he unlawfully keeps the purchaser put of possession. In the present case, however, while the sale took place on the 18th February 1902, and was confirmed on the 2nd May 1902, this suit was not instituted till the 20th May 1015, that is, after the lapse of more than twelve years from either of these dates. There has, consequently, been considerable discussion at the bar as to the legal effect of the delivery of possession which took place on the 1st June 1903, that is, within twelve years prior to the commencement of this litigation. The rule deducible from the judicial decisions relevant to the subject is that delivery of symbolical possession does not in any way affect the possession of or give s4art to a fresh period of limitation against persons who are not parties to a suit or execution proceedings. The decisions of the Full Benches in *Juggobundhu Mukerjee v. Ram Chunder* 5 C. 584 PC : 5 C.L.R. 548 : 3 Shome L.R. 68 PC: 2 Ind. Dec. (N.S.) 979 *Juggobundhu Mitter v. Purnanund Gossami* 16 C. 530 PC: 8 Ind. Dec. (N.S.) 350 PC, make this principle applicable to delivery of possession to decree holders and execution purchasers. This position has since been approved by the Judicial Committee in *Radha Krishna v. Ram Bahadur* 43 Ind. Cas. 268 PC : 27 C.L.J. 191 : 16 A.L.J. 33 : 23 M.L.T. 26 : 4 P.L.W. 9 : 34 M.L.J. 97 : 7 L.W. 149 : 22 C.W.N. 330 : (1918) M.W.N. 163 : 20 Bom. L.R. 502 (P.C.), where Lord Sumner stated that symbolical possession is sufficient to interrupt adverse possession when the adverse possessor is a party to the execution proceedings in which the symbolical possession is given; as regards persons not so parties, only actual dispossession can interrupt their adverse possession; see *Satish Chandra Sarkar v. Brojo Gopal Dutta* 46 Ind. Cas. 104 : 22 C.W.N. 807, *Ramjan Mahomed v. Chunder Mohan Aditya* 7 C. L.J. 640, *Doyanidhi Panda v. Kelai Panda* 11 C.L.R. 395 *Narain Das v. Lalta Prasad* 21 A. 269 PC: A.W.N. (1899) 56 : 9 Ind. Dec. 88 PC, *Sadulla Mridha v. Joynabunnessa Bibi* 32 Ind. Cas. 703. PC The same principle has been extended to the case of purchasers at sales for arrears of revenue, *Mozufier Wahid v. Abdus Samad* 6 C.L.R. 539, *Mir Wazir-ud-Din v. Lala Deoki Nandan* 6 C.L.J. 472, *Dursan Singh v. Bhawani Koer* 19 Ind. Cas. 974 : 17 C.W.N. 984, and *Sahodora Mudali v. Sarbosobha Dasi Nabin Chand Boral* 27 Ind. Cas. 258PC : 42 C. 638 PC : 20 C.L.J. 94 : 19 C.W.N. 1030. Now, in the case before us, as the first defendant claims to have been an adverse possessor, the delivery of possession could not operate to arrest the effect of the rule of limitation in her favour. It is worthy of note that she does not assert that her title had been perfected

by adverse possession before the revenue sale; she cannot consequently be regarded as a defaulting proprietor, Baikuntha Nath v. Basanta Kumari Dasid 34 Ind. Cas. 946 PC: 23 C.L.J. 151, Ajtar Ali v. Brojendra Kishore Roy 37 Ind. Cas. 252 PC: 24 C.L.T. 60, Jitendra Kumar Pal v. Mohendra Chandra Sarma 37 Ind. Cas. 239 PC: 24 C.L.J. 62 PC Mohim Chandra Deb v. Pyari Lal Das 30 Ind. Cas. 213 PC: 44. C. 412 PC: 25 C.L.J. 99 : 21 C.W.N. 537. We must accordingly investigate the question, whether the first defendant was in possession of the disputed-tenure, find if so, from what date.

3. The case for the appellant is that she received the disputed property in or about the year 1805 by way of gift from her father-in-law who was the proprietor thereof and that she exercised acts of possession in her character as rightful owner. The theory that her father-in-law was the owner and made a gift in her favour has, as we have seen, completely broken down. Consequently, if she did in fact exercise acts of possession in respect of the disputed land, they could not be attributed to a claim of title as rightful owner. Such evidence of possession as she has produced has been disbelieved by the Subordinate Judge. No intelligible hypothesis has been propounded why Hanif, who has been described as a rich merchant should allow himself to be dispossessed by his daughter. Indeed, there is no tangible evidence to show that between 1895 and 1902, when Hanif was the proprietor, the first defendant interfered with his possession and collected rent from the tenants who occupied the land." If she had in fact been in possession, she might, in the normal course of events have been expected to start herself to save the property after the sale for arrears of revenue. On the other hand, as we have seen, it was. Hanif who took steps to set aside the sale, appealed to the Commissioner, applied for review, and when every effort failed, he applied for a refund of the surplus. We feel no doubt that Hanif was in possession as proprietor up to the date of the revenue sale. In the examination of the evidence on this part of the case, we should not lose sight of the principles enunciated for the Judicial Committee in Secretary of State for India in Council v. Chelikani Rama Rao 35 Ind. Cas. 902 : 43 I.A. 192 PC : 39 M. 617 PC: 31 M.L.J. 324 : 20 C.W.N. 1311 : (1916) 2 M.W.N. 224 : 14 A.L.T. 4: 20 M.L.T. 435 : 4 L.W. 486 : 18 Bom. L.R. 1007 : 25 C.L.J. 69 (P.C.) and Kuthali Modthavar v. Peringati Kanharankutti 66 Ind. Cas. 451 PC: 26 C.W.N. 666 : 44 M. 883 : 14 L.W. 721 : (1921) M.W.N. 847 : 41 M.L.T. 650 PC : 30 M.L.T. 42 : 48 I.A. 395 PC: 24 Bom. L.R. 669 : A.I.R (1922).. (P.C.) 181 (P.C.) where Lord Shaw pointed out that in cases governed by Article 144 of the Schedule to the Indian limitation Act, if the plaintiff has succeeded in proving a clear title, the burden lies on the defendant to prove adverse possession for the statutory period, and possession to be adverse must have all the qualities of adequacy, continuity and exclusiveness; see also Jai Chand v. Girwar Singh 52 Ind. Cas. 366 PC: 41 A. 669 PC: 17 A.L.J. 814. and Shiva Prasad Singh v. Hira Singh 62 Ind. Cas. 1 PC : 6 P.L.J. 478 : (1921) Pat. 305 : 2 P.L.T. 487 (F.B.). The evidence of possession by Hanif fits in with the state of the title on the other hand, the story of the defendant that she was in possession because she was a donee from the

rightful owner manifestly stands discredited. In such circumstances, the Subordinate Judge has rightly believed that Hanif was in possession up to the time of the sale. We have next to consider the question of possession after the revenue sale. The plaintiff asserts that he obtained deliver of possession from the Collector and got himself registered both in the Municipality and in the Collectorate. This has been proved beyond don't. The plaintiff further asserts that Abdur Rahaman helped to collect the rent on his behalf and that the Municipal dues were paid on his account, till Abdur Rahaman was disappointed and set up the first defendant as the landlord of the property. This has been believed by the Subordinate Judge, and his view is fully supported by the evidence on the record. The plaintiff has been placed at a great disadvantage by reason of the death his officer, Huripada Mookerjee; he died of smallpox and it is stated that the papers in his possession were destroyed after his death. This, we think, is by no means an improbable story. The Subordinate Judge has further pointed out that the evidence of the Municipal bailiffs and the endorsements on the Municipal bills show that Abdur Rabatnan paid the Municipal tax as the agent of the plaintiff and not of the defendant. This arrangement went on till at least 1913 on J the collection papers of the first defendant must have been got up to support an untenable story. The evidence has been minutely discussed before us, and we have arrived at the conclusion that the views of the Subordinate Judge upon the question of possession, both before and after the revenue sale, cannot be successfully assailed. We hold accordingly that Hanif was in, possession up the time of the revenue sale, that the plaintiff thereafter obtained possession as purchaser, and that he was in such possession up to at least 1913. The suit is consequently not barred by limitation.

4. The decree of the Subordinate Judge 13 accordingly affirmed and this appeal dismissed with costs to the plaintiff-respondent.