(1880) 01 CAL CK 0002

Calcutta High Court

Case No: None

Gobind Loll Seal and Others		APPELLANT
	Vs	
Debendronath Mullick and Others		RESPONDENT

Date of Decision: Jan. 23, 1880

Citation: (1880) ILR (Cal) 679

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.
The plaintiffs in this case are the successors in title to one Mutty Loll Seal, who died in 1854; and as such they seek to recover a house, of which the defendants are in possession.

2. The defendants are the sons and widow of Sumbhoonath Mullick, who died some twenty years ago.

3. The house in question was formerly the property of Mutty Loll Seal Sumbhoonath Mullick was a friend or dependant of Mutty Loll Seal, and was, for many years, the object of his bounty. Some thirty years ago, several years before the death of Mutty Loll Seal, Sumbhoonath entered into possession of the house, and from that time the defendants have been in exclusive occupation.

4. So far there is no dispute. Then the case of the plaintiffs is set out in paras. 11 and 12 of the plaint:

11.--"The said Sumbhoonath Mullick, who had been an old dependent of the plaintiffs'' father, Mutty Loll Seal, was permitted by the said Mutty Loll Seal to occupy the house and premises No. 69, Chunam Gully, without paying any rent for the same."

12.--"Since the death of the said Sumbhoonath Mullick, which took place about twenty years ago, the defendants have been permitted, up to the time hereinafter stated, to reside in the said premises without paying rent for the same."

5. The case of the defendants is set out in para. 2 of the written statement.

2.--"The said Mutty Loll Seal was an intimate friend of Ramrutton Mullick, the father of the said Sumbhoonath Mullick, and the latter being in very reduced circumstances, the said Mutty Loll Seal, about thirty years ago, made a gift of the house in the plaint mentioned, to him, the said Sumbhoonath Mullick, and he was in possession during his life, and since his death, about twenty years ago, the defendants have been in possession of the said house by virtue of the said gift."

6. As to which of these stories is the true one there is no direct evidence; nor could there well be, both parties to the original transaction being long since dead.

7. The circumstances in favour of the plaintiffs are these:The title-deeds have remained in the possession of the Seals; the rates and taxes have been paid by them; and repairs have, from time to time, been executed by them (upon this point I accept the evidence of the plaintiff''s witnesses). In the books of the Municipality, and in those of the Collector, the house has always stood in the names of some of the Seals; and also in the general Register under Beng. Act VII of 1876.

8. Several witnesses also spoke to various conversations and oral admissions; but these I reject as untrustworthy.

9. The payment of rates and taxes, and the execution of repairs, are, at first sight, strong indications of ownership; but they lose their force when it is considered that Sambhoonath and his family were the objects of the bounty of the Seals, receiving from them for many years a regular allowance for their maintenance. I cannot say that the Seals may not have been just as likely to pay their taxes and repair their house as to provide them with maintenance.

10. Again, the fact of the house standing always in the books, I have referred to in the names of some of the Seals, is, at first sight, a circumstance of weight. But, on closer consideration, it loses its force. The plaintiff''s case is, that the house descended to the heirs of Mutty Loll. In the Collector''s books throughout, and in the Register under Beng. Act VII of 1876, the persons entered as owners are the trustees of the late Mutty Loll Seal. The meaning of this expression was not clear till a comparatively late stage of the case. But Mr. Meik, manager of the plaintiffs, when recalled for another purpose, explained it. There was a deed executed by Mutty Loll, by which he settled certain property in trust for his family; and this house is not included in it. Whoever, therefore, caused those entries to be made, did so, upon my view of the case in entire ignorance of the facts; and the entries are as inconsistent with the plaintiffs'' case as with the defendants. I can draw no inference from such entries.

11. In favour of the defendants are the facts that they and their father and husband have been in exclusive possession for thirty years; that they have paid no rent, and have neither given, nor been asked to give, any acknowledgment of the plaintiffs'' title; and that no claim to expel them was ever made till lately after ill-feeling had arisen by reason of other litigation, in which some of the parties to this suit were concerned; and that some years ago the defendants built a poojah-dalan in the house at their own expense, though it is sworn, and probably with truth, that some at least of the materials were given by the Seals.

12. It lies upon the plaintiffs to prove their case and recover by the strength of their own title. I think they have failed to prove the case they have set up.

13. I am further of opinion that, even if the plaintiffs had established the case they contend for, their claim would be barred by limitation. The period of limitation, and the point from which it is to run in claims for possession of land, are dealt with in Articles 134 to 144 inclusive, of the second schedule to the Limitation Act. The first thing to be observed about these provisions is, that (differing herein from some earlier Acts) the present law, in no instance makes the accruing of a cause of action, the point from which limitation is to run, in claims to possession. No doubt, in many actions, probably in most instances, the point adopted as the starting point is in fact coincident with the accruing of the cause of action; but it is not necessarily so. Just as, under the English Act, 3 and 4 Will. IV, c. 27, limitation may, in some cases, begin to run before any right of action has arisen: Owen v. De Beauvoir (16 M. & W. 547). Secondly, it seems clear that the framers of the Act were minded to get rid of the distinction between adverse and non-adverse possession wherever it could be done, wherever any other test could he found. Accordingly, it is only in the last Article, No. 144, in cases not otherwise provided for that the idea of adverse possession is allowed to come in.

14. Three articles have been referred to, and I think rightly, as those under some one or other of which the present case must fall, viz., Articles 139, 142, and 144. Article 139 deals with suits "by a landlord to recover possession from a tenant," and the limitation "runs from the time when the tenancy is determined." Article 142 deals with suits "for possession of Immovable property where the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession," and limitation "runs from the date of the dispossession or discontinuance." Article 144 deals with suits "for possession of Immovable property or any interest therein, not hereby otherwise specially provided for," and limitation "runs from the time when the possession of the defendant becomes adverse to the plaintiff."

15. The case does not, in my opinion, fall under Article 139. It may be that, in England, a person in the position in which the plaintiffs allege Sumbhoonath to have been, might properly be called a tenant-at-will; but the Limitation Act is an Act passed not for the Presidency towns, but for British India. And I do not think,

assuming the plaintiffs'' story to be proved, that the relation of the parties would be that of landlord and tenant within the meaning of those words as used in such an Act.

16. In Article 142 it appears to me that the Legislature intended to adopt the policy of the English Act, 3 and 4 Will. IV c. 27, Section 3, from which the language is taken; and I think full effect must be given to the plain meaning of the words used. The meaning seems to me to be this:That when there has been possession followed by a discontinuance of possession, time runs from the moment of its discontinuance, whether there has or has not been any adverse possession, and without regard to the intention with which, or the circumstances under which, possession was discontinued. In the present case, I think, it appears that thirty years ago Mutty Loll Seal was in possession of the premises in dispute, and that he then discontinued possession by putting Sumbhoonath Mullick in possession.

17. It was argued that this construction might, in some cases, work hardly. It may be so, in any case at all analogous to the present. I do not think it could. The true owner can always protect himself, either by taking care to establish the relation of landlord and tenant between himself and the person he puts in possession, or by insisting on periodic acknowledgments of his title u/s 19 of the Act.

18. It follows from what I have said, that, in my opinion, Article 144 has no application to this case.

19. On both grounds, therefore,--first, that the plaintiffs have failed to prove their case; secondly, that, if they had, their claim would be barred by limitation,--I think the suit must be dismissed with costs on scale No. 2.