(1899) 03 CAL CK 0013

Calcutta High Court

Case No: Appeal from Appellate Decree No. 770 of 1897

Nisa Chand Gaita and others	APPELLANT
Vs	
Kanchiram Bagani	RESPONDENT

Date of Decision: March 23, 1899

Final Decision: Allowed

Judgement

1. This appeal arises out of a suit brought by the Plaintiff-Respondent, to recover possession of a plot of land, in his Jamai right, that is, his right as tenant thereof, as well as on a title acquired by 12 years'' adverse possession. The question for decision is whether the Plaintiff is entitled to a decree merely upon proof of previous possession for a period less than 12 years, on the ground that the Defendant has established no title, the suit having been brought more than six months after the date of dispossession. That question was raised in the Courts below. The first Court answered it in the negative, and dismissed the suit. The lower Appellate Court, on appeal by the Plaintiff, has answered the question in the affirmative and given the Plaintiff a decree. In second appeal it is contended that this view is wrong in law; and in support of the contention urged on behalf of the Defendants-Appellants, the cases of Ertaza Hossein v. Bany Mistry ILR 9 Cal. 130 (1882), Debi Churn Boido v. Issur Chunder Manjee ILR 9 Cal. 39 (1882)., Purmeshur Chowdhry v. Brijo Lall Chowdhry ILR 17 Cal. 256 (1889)., Shama Churn Roy v. Abdul Kabeer 3 C.W.N. 158 (1898) and Wise v. Ameerunnissa Khatoon L.R. 7 IndAp 73 (1879). have been relied upon; while, on the other side, the cases of Khajah Enaetoollah Chowdhry v. Kishen Soonder Surma 8 W.R. 386 (1867), Mohabeer Pershad Singh v. Mohabeer Singh ILR 7 Cal. 591 (1881), and Ismail Ariff v. Mahomed Ghous ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99 have been cited as supporting the judgment of the lower Appellate Court. The case of Khajah Enaetoollah Chowdhry v. Kishen Soonder Surma 8 W.R. 386 (1867) and Mohabeer Pershad Singh v. Mohabeer Singh ILR 7 Cal. 591 (1881) no doubt, support the Respondent''s contention; but the case of Ismail Ariff v. Mahomed Ghous ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99 is quite distinguishable from the present case. If that were not so, then notwithstanding that a different

view is taken in the more recent decisions of this Court, we would have been bound to follow that decision in that case, it being a decision of the Privy Council. Now, the distinction between the case of Ismail Ariff v. Mahomed Ghous ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99 and the present case is this:--

2. There the Plaintiff was in possession when he brought his suit, whereas in the present case the Plaintiff is out of possession. What the Plaintiff asked for in the case of Ismail Ariff ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99 was a decree declaring his right, and an injunction restraining the Defendant from disturbing his possession. What the Plaintiff asks for in this case is only recovery of possession, and what was said by their Lordships of the Judicial Committee, with reference to the Plaintiff''s right to obtain this relief, is to be found in the following passage of their judgment:--"It appears to their Lordships that there is here a misapprehension of the nature of the Plaintiff''s case upon the facts stated in the judgment. The possession of the Plaintiff was sufficient evidence of title as owner against the Defendant. By sec. 9 of the Specific Relief Act (Act I of 1877), if the Plaintiff had been dispossessed otherwise than in due course of law, he could, by a suit instituted within six months from the date of the dispossession, have recovered possession, notwithstanding any other title that might be set up in such suit. If he could thus recover possession from a person who might be able to prove a title, it is certainly right and just that he should be able, against a person who has no title and is a mere wrong-doer, to obtain a declaration of title as owner, and an injunction to restrain the wrongdoer from interfering with his possession." This shows, as we understand the judgment, that the reason for their Lordships'' decision was this :--- That as the Plaintiff, had his position been rendered somewhat worse by his being dispossessed, could, by instituting a suit, within six mouths, for recovery of possession, under sec. 9 of the Specific Relief Act, have recovered possession even as against a person who might establish a better title, it was only right and just that if he brought his suit before he was dispossessed, he should be declared entitled to retain possession as against a mere wrong-doer and should obtain an injunction restraining the wrong-doer from interfering with his possession. But though that was so in the case of a Plaintiff'' who was in possession, and had, therefore, a possibility open to him of being restored to possession upon mere proof of possession, by instituting a suit under sec. 9 of the Specific Relief Act upon being dispossessed, it does not follow that it should be so in the case of a Plaintiff who had been in possession, and allowed more than six months to elapse after his dispossession, and therefore, lost the possibility of recovering possession by a suit under sec. 9 of the Specific Relief Act, upon mere proof of previous possession. The case of Ismail Ariff ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99. does not, therefore, in our opinion, help the Plaintiff in this case. Then, as regards the cases in this Court which have been cited for the Plaintiff-Respondent, they have been regarded in the later decisions of this Court as practically overruled by the decision of the Privy Council in Wise v. Ameerunnissa L.R. 7 IndAp 73 (1879).. In this last-mentioned case

their Lordships observe:--"It is quite clear that the Plaintiffs have failed to make out a title. The Defendants were put into possession by the Government, who were entitled to the lands, and they were ordered by the Magistrate, under the Code of Criminal Procedure, to be retained in possession. If the Plaintiff''s had wished to contend that the Defendants had been wrongfully put into possession, and that the Plaintiff''s were entitled to recover on the strength of their previous possession, without entering into the question of title at all, they ought to have brought their action within 6 months, under sec. 15 of Act XIV of 1859; but they did not do so;" and then their Lordships add :-- "The High Court, with reference to this point say (and, in their Lordships'' opinion, correctly say) : ''Further, defacto possession having been given to the Defendants under sec. 318 of the Code of Criminal Procedure, in accordance with the Deputy Collector''s award, the Plaintiff will not be entitled to a decree until and unless he can shew a better title to these lands than the Defendants. The fact that the Plaintiff''s possession as regards B, C and D was confirmed under Act IV of 1840, and that the Defendants Nos. 2 and 3 unsuccessfully endeavoured to disturb them by regular suit, does not bar the right of Government. See. 2 of Act IV of 1840 only affects persons concerned in the dispute. If Kalkini had belonged to a private individual ho might have reduced into his own possession lands which had accreted to the estate and which undoubtedly were his. Hut lands to which ho is unable to make out a title cannot be recovered on the ground of previous possession merely, except in a suit under sec. 15 of Act XIV of 1859, which must be brought within 6 months from the time of that dispossession.'" Following these observations of their Lordships of the Privy Council, this Court, in the cases of Ertaza Hossein v. Bany Mistry ILR 9 Cal. 130 (1882)., Debi Churn Boido v. Issur Chunder Manjee ILR 9 Cal. 39 (1882). and Purmeshur Chowdhry v. Brijo Lall Chowdhry ILR 17 Cal. 256 (1889), has held that a Plaintiff in a suit for possession, brought more than six months after his dispossession, is not entitled to possession merely upon proof of previous possession, short of possession for the statutory period of 12 years, which can give a title by adverse possession; and the last case cited for the Appellant, namely, Shama Churn Roy v. Abdul Kabeer 3 C.W.N. 158 (1898) also takes the same view, and distinguishes suits for recovery of possession from that class of cases which the Privy Council had to consider in the case of Ismail Ariff v. Mahomed Ghous ILR 20 Cal. 834 (1893), L.R. 20 IndAp 99. The weight of authority is, therefore, clearly in favour of the view contended for by the learned vakil for the Appellant. That being so, it is not necessary for us to go into the matter any further. If it were necessary to give reasons in support of this view, we should say that in a suit to recover possession, brought more than six months after the date of dispossession, the Plaintiff must prove title; and mere previous possession for any period short of the statutory period of twelve years cannot be sufficient for the purpose; because, if that were so, anomalous results might arise; and it would be difficult to determine what should be the relative durations of possession of the Plaintiff and the Defendant to entitle the former to a decree. For, take a case like this :-- A Plaintiff,

whilst in possession, which had lasted for 8 years, is dispossessed by the Defendant, and docs not bring his suit until after 7 years, why should 8 years'' possession of the Plaintiff entitle him to a decree against the Defendant, whose possession though originating it may be in force was allowed to continue for 7 years peaceably. Or again, the periods may be reversed; and a Plaintiff who was in possession for 7 years may be dispossessed, and may not bring his suit until after 8 years. These difficulties and anomalies must arise unless we accept the view contended for by Babu Saroda Charan Mitter on behalf of the Appellant. It is true, sec. 9 of the Specific Relief Act does not expressly prohibit a person from recovering possession upon mere proof of previous possession, in a suit brought more than 6 months after dispossession; but the inclination of our minds is, that if a person wishes to recover possession merely upon proof of previous possession, without proof of any title, the one remedy prescribed for him is to be found in sec. 9 of the Specific Relief Act. If he does not avail himself of that remedy, by bringing a suit within 6 months it becomes barred. The result is, that this appeal must be allowed, and the decree of the lower Appellate Court be set aside and that of the first Court restored and affirmed with costs in this Court and the Court below.