Nekjannessa Bibi and Another Vs Abbas Molla and Others

Court: Calcutta High Court

Date of Decision: July 5, 1923

Acts Referred: Limitation Act, 1963 â€" Section 19

Citation: 84 Ind. Cas. 657

Hon'ble Judges: Rankin, J; B.B. Ghose, J

Bench: Division Bench

Judgement

1. This is an appeal by the plaintiffs against the dismissal of their suit by the lower Appellate Court reversing the decree of the Trial Court. The suit

was brought on the 30th January 1919, and was one for khas possession of a tank. The plaintiffs and the main defendants claim under the same

landlords, it being admitted that the defendants Nos. 23 to 26 have the maliki right in the tank in suit. In 1916 the landlord settled the tank with the

plaintiffs. In 1904 it appears that the landlords had threatened the defendant"s that the tank would be settled with a third party. In 1914 they

advertised for settling the tank and at the auction defendants also bid. In these circumstances the contention of the plaintiff is that the learned Judge

has misdirected himself in law in finding that the landlords having been but of possession for over 12 years the plaintiffs suit cannot be maintained.

2. The case is admittedly one where the defendants are already tenants of the landlords. The defendants homestead adjoins this tank and if the

defendants have been in possession of the tank the inference is particularly strong that they have been in possession of it either by some leave or

license of the landlords or else under a claim that the tank is a part of the land to which they are entitled as a tenant. The learned Judge has dealt

with the case oh the line of decisions applicable to what is sometimes called adverse possession of limited interest. The learned Vakil for the

appellants contests the question whether upon the facts as found by the learned Judge the defendants possession has been continuous and adverse

for the whole of the 12 years.

3. Now, the learned Judge has found that the defendants have always been in possession of the tank in question. It is quite clear that he means to

find against any notion of mere user with leave and license. That matter may be put on one side altogether. The objection taken to the finding is that

as the landlords advertised for tenants and the defendants bid at the auction, this shows that the possession is riot adverse in its character. That

whether may be looked at in one or other of the two ways. It may be looked at as a piece of evidence upon the question whether the defendants

are in possession clearing to be tenants or whether in possession asserting that the landlords had no right whatever. The learned Judge has found

against the question of leave and license On the general facts of the case. If the matter be looked at from the point of View of acknowledgment it is

quite clear that there was no sufficient acknowledgment, under Section. 19 of the Limitation Act; and there was no disturbance of possession by

the holding of this auction. Various motives are possible to explain why the tenants should bid at such an auction, and we are wholly unable to find

that incidents of this auction show that the learned Judge was wrong in his finding of fact or that he must have misdirected himself on the point of

law. It has been contended that in the class of cases the whole question arises under Article 144 of the Limitation Act and, therefore, if it can be

shown that at any period the defendants possession was not adverse the plaintiffs must succeed. Now, it is undoubtedly the law that cases of this

character are not outside the scope of Article 142. The position is this if the person encroaching upon other land is not a tenant then the mere fact

of his open and continuous encroachment would prima facie be possession adverse to the fullest extent against the landlord. Because he is a tenant

it is presumed in the landlords favour that the possession is only under a claim of a limited right. Now, if the possession is under a claim which is

adverse to the landlord though only to a limited extent then for the purpose of the right which the tenant is claiming the possession of the tenant is

no longer the possession of the landlord. Article 142 and Article 144 in this case are in no wise in conflict. There is ample authority now for the

proposition that the plaintiff in this class of cases coming inÃ¯Â¿Â½to Court must show that he has been dispossessed not in the full, sense of the word

but in its limited sense within 12 years of the suit. This was laid down quite clearly in the judgment of Mr. Justice Mookerjee in Raktoo Singh v.

Sudhram Ahir 8 C.L.J. 557 and it was laid down also by the Privy Council in the judgment delivered by Sir John Edge in Dharani Kanta Lahiri v.

Gabar Ali Khan 18 Ind. Cas. 17 : 17 C.L.J. 277 : 17 C.W.N. 389 : 13 M.L.T. 185 : (1913) M.W.N. 157 : 15 Bom. L.R. 445 : 25 M.L.J. 95

(P.C.). For these reasons it does not seem to us that the law applied by the learned Judge is in any way wrong or that he has misdirected himself in

applying it.

4. Now, the only remaining question is this. It appears that in the plaint an alternative claim was made against the landlords for the refund of salami

of Rs. 400 paid to the landlords at the time when the plaintiffs took settlement of the tank. As regards the claim for khas possession the landlords

are mere pro forma defendants. But this claim upon which they are substantive defendants, has been coupled with the other claim for khas

possession. The learned Judge in the Court, of Appeal below took the matter to be thus having decided that the plaintiff cannot get khas

possession he said that the plaintiffs might then choose, to do one or other of the two things. They might choose to accept rent from the defendants

or they might sue the landlords for refund of the premium paid to them. He left it to the plaintiffs to make up their mind after the suit had been

dismissed as to what they would do. Now it appears that the landlords did not take any part in this case in the lower Appellate Court. It is true that

no mention of any intention to take rent from any body is in the plaint, and we do not see that there is any answer before the. Court to the claim to

have Rs. 400 refunded. This matter, in no way, affects any question of costs. As between the plaintiffs and the defendants who appear here as

respondents the appeal will be dismissed with costs. As against the landlords defendants the appellants must have a judgment in this action for Rs.

400.