

(1912) 06 CAL CK 0055

Calcutta High Court

Case No: None

Lahar Singh

APPELLANT

Vs

Johan Munda

RESPONDENT

Date of Decision: June 20, 1912

Citation: 16 Ind. Cas. 418

Hon'ble Judges: Beachcroft, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the defendant in a suit for recovery of possession of Immovable property. The plaintiff claims the disputed property as his, korkar land, from which he alleges to have been forcibly ousted by the defendant in May, 1904; he commenced this action on the 23rd December 1908. In the Court of first instance, the claim was resisted on the merits as also on the ground of limitation. The Court found upon the question of limitation in favour of the plaintiff but dismissed the suit on the merits. The plaintiff appealed and convinced the Judicial Commissioner that the decision on the merits, in so far as it was adverse to him, was erroneous. The defendant-respondent did not urge that the decision upon the question of limitation was wrong. Under these circumstances, the Judicial Commissioner did not re-investigate the question of limitation but reversed the decision of the Court of first instance and decreed the suit.

2. In the present appeal by the defendant, two grounds have been urged; first, that the question of limitation should have been examined by the Judicial Commissioner; and, secondly, that upon the pleadings, the suit was barred u/s 237 of the Chota Nagpur Tenancy Act, 1908. In our opinion, there is no substance in either of these contentions.

3. The Court of Appeal below was not called upon to determine the question of limitation which had been decided in favour of the plaintiff in the primary Court; that decision was not attacked by the defendant, and the Court was, therefore, concerned only with the question on the merits.

4. We are also not able to accept the contention that Section 237 of Act VI of 1908 B.C. has any application to the present case. That section provides that an application for the recovery of possession of a holding, or any portion thereof, from which an occupancy raiyat has been unlawfully ejected, must be instituted within three years from the date of such ejectment. Even if it be assumed that u/s 67 the plaintiff is an occupancy raiyat, the present proceedings have clearly not been instituted on an application as mentioned in Section 237. It has been argued on behalf of the appellant that the term "application" in Section 237 includes a suit; but this is clearly unfounded. In Sections 231, 232 and 234, a clear distinction is observed between a suit and an application. In sections 233 and 236, reference is made only to a suit. In Section 237, reference is made only to an application and not to a suit; that application is clearly an application as contemplated in Clause 5 of Section 139, which provides that all applications recover the occupancy or possession of any land from which a tenant has been lawfully ejected by the landlord or any person claiming under or through the landlord, are cognizable by the Deputy Commissioner, and not in any Civil Court. The present suit was instituted in the Civil Court, and has been tried out without any objection to the jurisdiction of the Court. Nor was any objection taken to the competence of the Judicial Commissioner to hear an appeal against the decision of the Court of first instance. The reason is obvious. The plaintiff has not alleged that he was ejected by the landlord or any person claiming under or through him; he seeks to recover possession from the defendant as trespasser. On this footing, he sued in the Civil Court, and the suit has been tried out on that basis without any objection by the defendant. It is impossible to hold that the plaint in a suit of this character is an application within the meaning of Section 237 of the Chota Nagpur Tenancy Act, 1908.

5. There is thus no substance in either of the two objections urged. The appeal, therefore, fails and is dismissed with costs.