(1880) 08 CAL CK 0004

Calcutta High Court

Case No: None

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

Date of Decision: Aug. 11, 1880

Acts Referred:

- Limitation Act, 1963 - Article 142

Citation: (1881) ILR (Cal) 311

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Pontifex, J.

There are two questions to be considered in this:--1st was the house in dispute an absolute gift from Mutty Lall Seal (who died in 1854) to Shumbhoonath Mullick ? and 2nd, if it was not an absolute gift, conveying the property, are the plaintiffs barred by limitation from recovering the house ?

2. With respect to the first question there is no direct or contemporaneous evidence that can be relied on; and it must, consequently, be determined by the conduct of the parties and the probabilities of the case.

3. The title-deeds of the house remained in the possession of the Seals; the property continued to stand in their names; when Beng. Act VIII of 1876 was passed, the Seals were registered as proprietors; the Seals have all along paid the rates, taxes, and assessments payable in respect of the house; the Seals have all along done the repairs when requested by the Mullicks; and when some five or six years ago, the defendants desired a poojah-dalan to be built, on account of their turn of worship of a certain idol having arrived, the Seals furnished the materials or the greater part of the materials, though they declined, for the reasons stated by the witnesses, to

build the poojah-dalan; and lastly, when in consequence of this poojah-dalan having been erected a higher assessment was placed upon the premises, the Seals paid, and continued to pay, such higher assessment. Moreover, the Seals, for many years, made a charitable allowance to the Mullicks towards their maintenance. That allowance ceased some years ago, but the payment of the rates, &c, and the execution of the repairs by the Seals have continued.

4. The defendants explain these circumstances as being merely the continued bounty and charity of the Seal family; but to my mind these circumstances only convey the impression of continued acts of dominion by the Seals with respect to the property; and reflecting back on the original transaction, with respect to which we have no reliable direct evidence, they persuade me that there was never any gift of the house, but only a charitable permission to occupy it. The constant requests by the Mullicks that the Seals should execute repairs, and their application to the Seals to build a poojah-dalan, appear to me to be recognitions on the part of the Mullicks that they were occupying only by permission of the Seals.

5. The second question then arises:--Are the Seals now barred by limitation ?

6. It is argued that Article 142 of the second schedule to the Limitation Act governs this case, and is conclusive in the defendants'' favour. That article provides that the period of limitation for a suit for possession of Immovable property, when the plaintiff has "discontinued" the possession, shall be twelve years from the date of "discontinuance."

7. If that article is to be construed so that "discontinuance" includes a permissive occupation on account of proved charity or relationship, very dangerous consequence would result in this country. For nothing is more common in a Hindu family than to permit members of it, having no legal claim upon it, such as married daughters and their husbands, to reside in part of the family property rent-free, and without written acknowledgment.

8. But the use of the word "discontinued" in Article 142 of the second schedule to the Limitation Act has evidently been copied from the third Section of 3 and 4 Will. IV, Clause 27. In that Act, however, the word "discontinued" cannot be taken to apply to a tenancy-at-will or an occupation of a like nature, because the limitation applicable to a tenancy-at-will is expressly provided or by another Section of that Act.

9. Now, though an estate exactly corresponding to an English tenancy-at-will, with its precise incidents as to endurance and determination, may not exist in India, yet a permissive occupation, which has very considerable resemblance to a tenancy-at-will, is of extremely frequent occurrence in this country in, consequence of the family habits and natures of its people.

10. I think, therefore, that as Section 3 of the English Act does not apply to a tenancy-at-will, so it was not intended that the corresponding Article 142 of the second schedule to the Indian Act should apply to a permissive interest in India.

11. I am of opinion that a permissive possession or occupation accorded on the ground of proved charity (as in the present case) or relationship, was intended and must be held to be governed by Article 144, and not by Article 142 of the Limitation Act; and, therefore, that limitation should operate in such cases from the time when possession first became adverse. And in this case the evidence shows that the possession never became adverse.

12. I am unable to construe "discontinuance" in Article 142 as an active putting into possession, by the owner, of some dependent by way of charity.

13. But even if Article 142 were applicable to cases of this nature, I am of opinion that it would not apply to the present case.

14. As Lord Justice BRAMWELL said in Leigh v. Jack (L. R. 5Exch. D.272):--"After all, it is a question of fact, and the smallest act would be sufficient to show that there was no discontinuance." In the present case the repeated acts of entry by the Seals for the purpore of executing repairs indicate a continuance of dominion and ownership; and the continued applications and requests by the Mullicks to the Seals seem to me, as Chief Justice COCKBUEN says in the case quoted, acts of persons who did not intend to be trespassers or to infringe upon another''s rights. Upon the evidence, as it stands, therefore, I think, the plaintiffs are entitled to recover, and that the judgment of the lower Court should be overruled.

Richard Garth, C.J.

15. I quite concur in this judgment; and I only desire to add, that I think the words "dispossession" and "discontinuance" (which are borrowed from the English Limitation Act of William the IVth) apply only to cases where the owner of land has, either by his own act, or that of another, been deprived altogether of his dominion over the land itself, or the receipt of its profits.

16. But where the owner, in the exercise of his own proprietary right, permits some other person to occupy his land, or to receive his rents, then, whether the relation of landlord and tenant exists between the parties or not, I consider that the possession of the owner is not discontinued, because, under such circumstances, the possession of the occupier is the possession of the owner.

17. The case then comes under Article 139 of the Limitation Act, if the relation between the parties is that of landlord and tenant; or under Article 144, if there is no such relation; and in either ease the plaintiffs in this suit are not barred.

18. It was contended by Mr. Kennedy for the respondents, that, assuming the possession of Sumbhoonath Mullick in the first instance to have been permissive,

and that a tenancy-at-will was created in his favour, the will was determined on the death-of Heeralall Seal, or at any rate on the death of Sumbhoonath Mullick; and that, upon such determination of the will, the possession of the Mullick family became adverse.

19. But whether it was adverse or not, is a question to be determined by the evidence--see Eyre v. Walsh (10 Ir. C. L. R. 346)--and probably it might have beta considered adverse, according to the rule of English law, if nothing had afterwards happened to show that the Seals still retained their dominion over the property, and that the occupation of it by the Mullicks continued only permissive.

20. But the self-same state of circumstances which satisfies me that the occupation by Sumbhoonath Mullick was permissive in the first instance, has continued without intermission since the death of Heeralall Seal. The rates and taxes of the house have continued to be paid by the Seals; the Seals have all along been the registered owners; they, have done the repairs when necessary; and that very remarkable piece of evidence, that the Mullicks requested the Seals to build them a dalan, and actually provided the materials for the building of it, occurred within the last five years.

21. We are not hampered here by the provision, which has raised so many nice points in England, u/s 5 of the Statute of William the IVth, with regard to tenancies-at-will ceasing at the end of the first year''s occupancy. So long as the tenancy of the occupier does not become adverse to that of the owner, limitation does not begin to run; and an owner of land in this country seems in as favourable a position under the present Act as he was under the former Act of 1859--see Phillips v. Nund Coomar Banerjee (8 W. R. 385) and Khuruckdharee Singh v. Bewat Lall Singh (12 W. R. 167). I think, therefore, that the defendants'' possession being permissive only, the plaintiffs are not barred by limitation, and our judgment is, that they are entitled to a decree for the property in question, with costs on scale 2 in both Courts.

Article 139:--

Description of suit.	Period of limitation.	Time from which period begins to run.
By a landlord to recover possession from a tenant.	Twelve years ...	When the tenancy is determined.