

(1879) 03 CAL CK 0019

Calcutta High Court

Case No: None

Umbicka Churn
Gopta

APPELLANT

Vs

Madhub Ghosal and
Others

RESPONDENT

Date of Decision: March 10, 1879

Citation: (1879) ILR (Cal) 870

Hon'ble Judges: Mitter, J; Birch, J

Bench: Division Bench

Judgement

Mitter, J.

This is a suit to recover possession of 7 1/2 bighas of land upon the allegation that the defendants who held it as the plaintiff's tenants were served with a notice by which their tenancy was determined. The Munsif decreed the claim, but the lower appellate Court has reversed that decree upon the ground that the tenancy of the defendants alleged by the plaintiff was not proved, and that, on the other hand, the defendants had established adverse possession of the disputed land for more than twelve years.

2. The plaintiff has preferred this special appeal, and contends that notwithstanding his failure to prove that the defendants held the disputed land as his tenants, he is entitled to a decree upon the other facts found by the Courts below.

3. These facts are as follows: The land in dispute was part and parcel of a tenure of 11 bighas 15 cottahs held by the defendants under one Rungomoni Dabee, the patnidar of lot Senapoti Mehal, Some time before 1864, the rent payable by the defendants fell into arrears, and a suit was brought against them by Rungomoni. A decree having been obtained in execution of it, the tenure was sold and purchased by the decree-holder herself on the 22nd Sravan 1271 (1864). On the 11th September 1865, Rungomoni not having been able to take khas possession of the tenure brought a suit to eject the defendants. This suit was decreed in her favour on

the 31st January 1866, and in August 1866 formal possession in execution of this decree was given to the decree-holder by an officer of Court. The plaintiff acquired the rights of Rungomoni in November 1868 by a pottah of the whole 11 bighas and 15 cottahs of land executed in his favour by her. Upon these facts, the plaintiff contends that he is entitled to a decree, because in a suit between his landlord and the defendants, the title of the former has already been established, and that the present suit has been brought within twelve years from August 1866, when, in execution of the decree passed in that suit, formal possession was delivered to his landlord by a Court officer.

4. The title of the plaintiff to the land in dispute is quite clear, but the lower Appellate Court has dismissed the suit as barred by limitation. The District Judge is of opinion that, as the defendants were never dispossessed, notwithstanding the execution of the process of delivery of possession taken out by Rungomoni, the claim is barred by limitation. In support of this view, he cites two decisions of this Court--Pearee Mohun Poddar v. Jugobundhoo Sen 24 W.R., 418 and Mahomed Wali v. Noor Buksh 25 W.R., 127. The first-mentioned case really supports him; but the facts of the other case are not set forth in the Weekly Reporter, and without them we cannot say whether it is in accordance with the view taken by the District Judge in this case. So far as the facts are given in the judgment, it appears to us that all that it decides is that unless possession is obtained in execution of a decree for possession of land, the decree-holder cannot maintain a second suit for possession against the same defendants alleging a fresh disturbance of his possession. But in the present case no such question has arisen. In this case the finding is that Rungomoni obtained formal possession through the intervention of the Court in execution of her decree against the defendants. The question is, she not having taken any steps afterwards to put the defendants actually out of possession, whether a suit to recover possession brought by her lessee within twelve years from the date of the execution proceedings would be barred by limitation.

5. As already observed, the ruling to be found in Pearee Mohun Poddar v. Jugobundhoo Sen (24 W.R., 418) fully supports the view of the District Judge. But it appears to us that the view taken in that case is opposed to the decision of the Judicial Committee in Ganga Gobind Mundul v. Bhoopal Chunder Biswas (19 W.R., 101). This latter case is noticed by the learned Judge, whose judgment is reported in the above-mentioned case of Pearee Mohun Poddar v. Jugobundhoo Sen (24 W.R. 418), but he draws a distinction which it seems to us does not really exist.

6. From the printed record the facts of the Privy Council case appear to be these. One Hurnarain Mundle, possessed of large properties, died, and left surviving him two sons, Digumber and Rajkristo, and three daughters, the eldest of whom was married to Sumboo Halder, the second to Nobin Tikaree, and the third to Bhoopal, the plaintiff in that suit. Digumber died first, and his widow was Romonee Dassee; then died Rajkristo before he was married. Of his sisters, only Sumboo's wife at that

time had a son named Protap. Shortly after Rajkristo's death Protap also died. It was alleged by the plaintiff in that case that Rajkristo's share first devolved upon Protap, and upon Protap's death, upon his father Sumboo. Of the properties left by Hurnarain some were in the possession of his agnatic relations, Peary Lall Mundle and others, and the rest in the possession of Romonee Dassee. A deed of gift was executed by Sumboo, by which out of 8 annas of the properties of Hurnarain, which constituted the share of his youngest son Rajkristo, he gave 2 annas to Bhoopal and 1 anna to one Nobin Vikaree. Sumboo brought a suit against Romonee Dassee and the Mundles to recover the properties of Rajkristo, While this suit was pending, Sumboo sold his rights to one Joykristo, who got himself substituted for his vendor as plaintiff in the action. A decree was passed in favour of Joykristo for 8 annas of the properties left by Hurnarain. Against this decree Romonee alone appealed, and it was modified, so far as the properties in her possession were concerned, to a 5-annas share. In execution of this decree, Joykristo obtained possession of the 5-anna share decreed in the way in which possession is delivered in execution of decrees. Joykristo afterwards sold all his rights to the Mundles. Bhoopal then, under the deed of gift referred to above, brought the suit in question against the Mundles to recover possession of 2 annas of Hurnarain's properties, which at the time of Hurnarain's death were in their possession. The suit was instituted within twelve years from the time when Joykristo obtained possession in execution, but more than twelve years from any of the following dates, viz., (i) when wrongful possession was first taken by the Mundles; (ii) when Hurnarain died; and (iii) when the deed of gift was executed by Sumboo in favour of Bhoopal.

7. The main defence raised in the suit was limitation. With reference to this question, their Lordships of the Judicial Committee observe: "Joykristo executed the decree under which a 5-anna share was delivered to him in the manner in which delivery is made under executions of decrees for land in the possession of ryots, viz., by beat of drum and the affixing of bamboos; and he filed a receipt for the same in the Court of the Principal Sudder Ameen. The decree and execution put an end altogether to limitation. It is immaterial whether Joykristo obtained actual possession or not." It is quite clear from this passage that the Judicial Committee have held that, when a decree for possession is executed, and possession delivered in the usual way, whether actual possession is thereby obtained or not, the defendant cannot thereafter successfully rely upon the plea of limitation based upon his wrongful possession previous to the execution. In the decision in the case of Pearee Mohun Poddar v. Jugobundhoo Sen (24 AnW.R., 418), Mr. Justice Markby, referring to the Privy Council case, thinks that "it does not lay down this proposition, and the only ground he assigns for this opinion is that the Privy Council record shows that the Mundles never questioned the fact that Joykristo obtained possession of 5-anna share of the properties decreed in his favour. This is true; but the Judicial Committee decided the question of limitation quite irrespective of the admission of the Mundles upon this point. And the Privy Council record shows the reason why this admission

was not made the basis of their decision. The record shows that, although the Mundles admitted the fact of Joykristo's possession, the plaintiff Bhoopal, on the other hand, alleged that Joykristo was a mere benamidar for the Mundles, and their Lordships of the Judicial Committee were of opinion in the passage extracted above that the suit was not barred by limitation, even if Joykristo being a mere benamidar did not obtain actual possession.

8. The result, therefore, is that the decision of the lower Appellate Court in this case on the question of limitation is contrary to the ruling in the Privy Council case above referred to. It has been already shown that there cannot be any question as to the plaintiff's title.

9. The decision of the lower Appellate Court must therefore be reversed, and the plaintiff's suit decreed with costs in all the Courts.