

Narayana Row Vs. Dharmachar

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Court : Chennai

Decided On : Oct-07-1902

Reported in : (1903)13MLJ146

Appellant : Narayana Row

Respondent : Dharmachar

Judgement :

1. The facts found by the lower appellate Court and which in Second Appeal we have to accept are, that the uncle of the plaintiff, one Jayachar, was in possession of the site mentioned in the plaint since 1881, that he let defendants 1 and 2 into possession of the same in 1892 under a lease for a term of 5 years, that the 3rd defendant, the appellant in this Court, obtained possession of the same from the 1st and 2nd defendants and that Jayachar died in 1898 shortly before the institution of this suit, leaving a will devising the site to the plaintiff and admitting in the description of the site that it had all along been the plaintiff's property and that he, Jayachar, held it only as the plaintiff's agent. The District Judge also finds that the case of the 3rd defendant that the site belongs to him and that his agent allowed defendants 1 & 2 to enter into possession thereof is false, but that he obtained possession from the 1st and 2nd defendants during the term of the lease under which they had been let into possession by the plaintiff's uncle on the footing that up to the date of his death or at any rate until the 3rd defendant obtained possession of the site from the 1st and 2nd defendants. Jayachar was in possession of the site, through his tenants defendants land 2, either on his own

behalf or as agent of the plaintiff and in the former case, the plaintiff derives title to possession under the will of Jayachar. The District Judge decreed in favour of the plaintiff and reversed the Munsif's decree, which dismissed the plaintiff's suit on the ground that the plaintiff did not establish his title to the site. The appellant's counsel contends that the decree of the District Judge cannot be supported, as he does not find that plaintiff has made out his title that the possession which he finds in favour of Jayachar assuming that such possession will enure to the benefit of the plaintiff not being for the statutory period can give the plaintiff no title by prescription and that therefore the District Munsif's decree ought to be restored, notwithstanding that both the courts have found that the 3rd defendant has failed to establish title in himself.

2. The District Munsif found that neither the plaintiff nor the 3rd defendant was the owner of the site, but that one Srinivasa Row was the owner, and that on his death his sons have become entitled to the same as his heirs. If, as found both by the District Munsif and the District Judge, Jayachar was in possession since 1888, it must be presumed that he was the owner thereof, and that if he had held such possession on behalf of and as agent for the plaintiff, the plaintiff must be presumed to be the owner (Section 110 of the Indian Evidence Act). Though this presumption is rebuttable and, as found by the District Munsif, it has been rebutted, it is unnecessary to call upon the District Judge to submit a finding as to whether or not he concurs in the finding of the District Munsif, that Srinivasa Rao's sons are the owners of the site for even in the view that they were the owners at the date of this suit, the District Judge was right in holding that Jayachar's possession--whether it was on his own behalf or as the plaintiff's agent, was sufficient to entitle the plaintiff to recover the site from the 3rd defendant who has established no title to the same nor possession prior to that of Jayachar and who by wrong, obtained possession of the site from the 1st and 2nd defendants as if they had been let into possession by himself and they had surrendered the same to him, and who has been withholding possession of the site from Jayachar and the plaintiff since and subsequent to the determination of the lease under which the 1st and 2nd defendants were holding under Jayachar. In the language of modern English authorities, 'possession is good title against all but the true owner, (Asher v. Whitlock (1865) L.R. 1 Q.B. 1 and a person in peaceable possession of

land has, as against every one but the true owner, an interest capable of being inherited, devised or conveyed.' *Asher v. Whitlock*, per Markby, J. at pp. 2 and 3). As observed by Subramania Aiyar, J. in *Mustapha Saib v. Santha Pillai* I.L.R. 23 M. 179 the above principle of law is so firmly established as to render a lengthened discussion about it quite superfluous. There is nothing in the Indian Law which militates against this principle and with all respect we are wholly unable to concur in the view taken by Calcutta High Court in *Nisa Chand Gaita v. Kanchiram Bagari* I.L.R. 26 C. 579 that previous possession for any time short of the statutory period will not entitle a plaintiff to a decree for recovery of possession in a suit brought more than six months after dispossession even if the defendant could not establish any title to the disputed land. In our opinion, Section 9 of the Specific Relief Act, corresponding to Section 15 of Act XIV of 1859, is in no way inconsistent with the position that as against a wrong-doer prior possession of the plaintiff in an action of ejectment is sufficient title even if the suit be brought more than 6 months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by showing that the title and right to possession are in a third person. A plea of *jus tertii* is no defence unless the defendant can show that the act complained of was done by the authority of the true owner *Graham v. Peat* 1 East 244 and *Chambers v. Donaldson* 11 East 65 and it is immaterial however short or recent, the plaintiff's possession was *Callis v. Cowper* 4 Taunt 547 *Doe d. Hughes v. Dyeball*. 1 Moo. & M. 346 The only effect of Section 9 of the Specific Relief Act is that if a summary suit be brought within the time prescribed by that section, the plaintiff therein, who was dispossessed otherwise than in due course of law, will be entitled to be reinstated even if the defendant who thus dispossessed him be the true owner or a person authorized by or claiming under him, but a decree in such a suit will not have the force of *res judicata* on the question of title.

3. The rule of English Law that possession is good title against all but the true owner was adopted and enforced by the Judicial Committee of the Privy Council in two Indian cases *Sunder v. Parbati* I.L.R. 12 A 51 and *Ismail Ariff v. Mahomed Ghous* I.L.R. 20 C. 834. In *Sunder v. Parbati* I.L.R. 12 A 51 the Judicial Committee observed that the Chief Justice of the Allahabad High Court was right in his statement of the law, that according to the import of the authorities cited by him

"possession is a good title against all the world except the person who can show a better title. By reason of his possession such person has an interest which can be sold or devised. But their Lordships, being of opinion that the Chief Justice erred in not applying that law to the facts of that case, held that the widows of a deceased Hindu had a possessory title or interest in his estate notwithstanding that a preferable title might exist in others through the deceased devisee of their husband, and that the estate being jointly held by the widows though for a time short of the statutory period after the death of the devisee was partible between the widows and that either widow might maintain a suit for partition against the other.

4. In *Ismail Ariff v. Mahomed Ghous* I.L.R. 20 C. 843 it was held that possession of land was sufficient evidence of right as owner, as against a person who had no title whatever and that the plaintiff was entitled to obtain a declaratory decree and an injunction restraining the wrongdoer from interfering with his possession.

5. The principle underlying the rule of law in question seems to be that acquisition of title by operation of the law of limitation, being a lawful mode of acquiring title, the person in peaceable possession is entitled to maintain such possession against all but the true owner and that therefore a third party who has no better title than the person in possession has no right to invade upon the possession of the latter and interrupt or arrest his lawful acquisition of title by his continuing to remain in possession for the statutory period. It is the true owner alone that is entitled to arrest his title as against the person wrongfully in possession and prevent such wrongful possession ripening into prescriptive title. But a third party who, without deriving title under the true owner and without his authority, interrupts such possession before it has ripened into prescriptive title is a trespasser not only against the true owner, but also against the party actually in possession and subject to the law of limitation either of them is entitled to maintain a suit in ejectment against such intruder, as a trespasser.

6. As the second appeal fails on this ground it is unnecessary to consider the other ground on which also the decision of the District Judge is based. The second appeal is, therefore, dismissed with costs.

