

Tamizuddin Vs. Ashrub Ali

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Court : Kolkata

Decided On : Mar-29-1904

Reported in : (1904)ILR31Cal647

Judge : Francis W. Maclean, C.J.,; Prinsep,; Ghose,; Harington and; Brett, JJ.

Appellant : Tamizuddin

Respondent : Ashrub Ali

Judgement :

Francis W. Maclean, C.J.

1. I regret that in this case I am unable to follow the ruling in Bhagabati Churn Roy v. Luton Mondal (1902) 7 C.W.N. 218. I do not think the case is governed by Article 3 of the second schedule to the Limitation Act. The suit is one for the establishment of title and recovery of possession it cannot be regarded as merely a suit for possession, under Section 9 of the Specific Relief Act. I agree with the referring Judges that the plaintiffs being non-occupancy raiyats, who have apparently been allowed by their landlords to hold over after the expiry of the term for which the land was leased to them, have a good title to the land, entitling them to recover possession of it against any one, who is not shown to have a better title than themselves. Here the defendants are mere trespassers. As I concur in the reasoning and conclusion of the referring Judges, I do not think it necessary to say more. I may also say I have read Mr. Justice Ghose's judgment, in which I also

concur. I answer the first question in the negative: the second question in the circum. stances of the case becomes unimportant and does not practically arise.

Prinsep, J.

2. This is a suit brought by a non-occupancy raiyat for possession of land, of which, he has been illegally dispossessed by the defendant, who found to be a trespasser.

3. The point referred to this Full Bench is what is the limitation for such a suit, and the reference has been made because the referring Judges do not agree with *Bhagabati Charan Roy v. Luton Mondal* (1902) 7 C.W.N. 218, in which it was held that such a suit is under Section 9 of the Specific Relief Act and must be brought within six months from the alleged illegal dispossession.

4. A suit under Section 9 of the Specific Relief Act is a possessory suit in which no question of title is involved. Possession within the prescribed period and dispossession without the consent of the plaintiff: and otherwise than in due course of law are the only issues for determination, and it has consequently been held that where a person seeks to recover possession of property of which he has been illegally dispossessed, on proof of his title to the property the suit is governed by the ordinary law of limitation.

5. The question before us is whether the present suit is one of that description. The suit is; brought by a non-occupancy raiyat to recover possession of land by establishment of title, and the issue before us is whether the plaintiff, a non-occupancy raiyat, has any title to the land beyond his right to be placed in possession on the ground that he has been illegally ejected.

6. Section 44 of the Bengal Tenancy Act declares that a non-occupancy raiyat shall be liable to ejectment only on certain stated grounds, and under Section 45 the landlord can sue subject him on expiration of his lease only after notice duly served. Section 89 declares that no tenant shall be ejected from his tenure or holding except in execution of a decree. The law thus declares the right of an occupancy raiyat to be maintained in possession. Does this constitute a title in the

land? Or is it not rather a right to be maintained in possession, until ejected in due course of law as therein described--Is not a suit to recover possession of land, from which a non-occupancy raiyat has been illegally ejected, founded simply on his right to be maintained in possession rather than on any title with him in the land. The right to hold possession as against an illegal dispossession is one which in a possessory suit under Section 9 of the Specific Relief Act is with any person, who can prove an illegal dispossession. The law protects him against the illegal dispossession quite independently of any title on which he may claim to hold it. He has a right to remain there as against the dispossessor, even though such person may have a superior title. In a possessory suit under Section 9 of the Specific Relief Act the question of title to the land in suit cannot be raised. Such a suit is determined simply on the ground of illegal dispossession within the prescribed period of six months. I therefore am of opinion that there is a clear distinction between a suit founded on a right to be restored to possession, because that possession has been illegally disturbed and a suit to recover possession illegally disturbed on the ground that there is a title in the land irrespective of the right which every one, even one who is a trespasser and without any title, has to be maintained in possession against, an illegal dispossession.

7. In my opinion, while a non-occupancy raiyat has a right to be maintained in possession against an illegal dispossession, he has no title in the land irrespective of such right and that right is not a title such as would bring his suit outside Section 9 of the Specific Relief Act.

8. What is the title of a non-occupancy raiyat, in a suit brought against his landlord to recover possession by reason of his illegal dispossession? He has a right to be restored to possession because the disturbance may be contrary to the terms of Sections 44 and 45 of the Bengal Tenancy Act, which contain the law on the subject. He could not in my opinion bring a suit to recover possession on the strength of his title. In a suit against his landlord the question of illegal ejectment such as could be raised on a suit under Section 9 of the Specific Relief Act could alone be raised. He has no title in the land as against his landlord. He has no title to convey to another in his lifetime by his voluntary act or on his death to his heir. His heir may be entitled to the standing crop raised by the deceased, as has been

just declared by this Full Bench, but he cannot claim possession of the holding. The title to the land, on which a suit can be brought to recover possession as against a trespasser, is with the landlord. The right to be maintained in possession or to be restored to possession against a trespasser, which may be pleaded in a suit brought by non-occupancy raiyat depends on his right not to be disturbed--not on any title in him independent of that right. The right not to be disturbed in peaceful possession is even with one, who is a trespasser. In my opinion a non-occupancy raiyat has no higher right and has no title on which he can bring a suit to recover possession, except one based on that right, and such a suit can only be one within Section 9 of the Specific Relief Act. These are the considerations which were present to me as one of the Judges in *Bhagabutty Charan Roy v. Luton Mondal* (1902) 7 C.W.N. 218.

9. I am confirmed in this opinion by reference to the law of limitation, in regard to a suit to recover possession of land brought by an occupancy raiyat. Such a suit can be brought only within two years from the date of dispossession. Bengal Tenancy Act, Schedule III(3). Still if such a suit on title by a non-occupancy raiyat is outside Section 9 of the Specific Relief Act it can be brought within a much longer period under the ordinary law of limitation. It would therefore be that, while a suit by a raiyat having the statutory right of occupancy can be brought only within two years, a much longer period is allowed for a suit by a non-occupancy raiyat of an inferior class. It has been suggested that this is due to an oversight on the part of the Legislature, and that in specially providing for the case of an occupancy raiyat the Legislature has neglected to deal with suits by a raiyat of an inferior class, and has thus allowed him the benefit of a longer time under the ordinary law of limitation, within which he can bring his suit. I cannot accept this view when in my opinion a different and reasonable explanation is forthcoming. It seems to me rather that the Legislature proceeded on the ground stated by me.

10. In my opinion the case of *Bhagabutty Charan Roy v. Luton Mondal* (1902) 7 C.W.N. 218 was rightly decided, and the term of limitation applicable to the present suit is six months, the suit being one under Section 9 of the Specific Relief Act.

Ghose, J.

11. The true question involved in this reference is whether the remedy indicated in Section 9 of the Specific Relief Act is the only remedy which the Legislature has provided for a non-occupancy raiyat, who has been dispossessed otherwise than in due course of law; for, if not, it is obvious that the limitation of six months provided by that section does not apply, and that the suit is governed by some one or other of the articles in the Indian Limitation Act. The chief argument in support of the proposition that it is the only remedy seems to be that a non-occupancy raiyat has no right to the land, but has only a right to be maintained in possession, until he is ejected in accordance with the provisions of Sections 44 to 46 of the Bengal Tenancy Act. I regret I am unable to accept this proposition as correct.

12. Chapter VI of the Bengal Tenancy Act gives to a non-occupancy raiyat certain rights. After such a raiyat has been admitted to the occupation of the land, his rent cannot be enhanced except by a registered agreement, or an agreement under Section 46. He cannot be ejected unless it be on one or other of the grounds mentioned in Section 44, and when the ejectment is sought on the ground of expiry of the term of the lease, a notice to quit must be served on him at least six months before the expiration of the term. The rent of a non-occupancy raiyat cannot arbitrarily be enhanced, and when he refuses to execute an agreement to pay enhanced rent, the Court is bound to determine what may be the fair and equitable rent. And when the Court determines such rent and the raiyat agrees to pay it, he is entitled to remain on the land for a term of five years. Those provisions indicate that a non-occupancy raiyat has something more than a bare right to be maintained in possession of the land, until he is ejected in due course of law. He is, I think, entitled to the land as a tenant, until he forfeits his rights as such, and he is ejected in accordance with the provisions of Sections 44 to 46. Take the case of an on-occupancy raiyat, whose rent has been determined under Section 46. He is entitled, upon the rent being so determined, to remain on the land for a term of five years as a tenant at the rent determined. This is certainly something more than a bare right to be maintained in possession. He is entitled to the land as a tenant for five years, and if, on the expiry of the term, he is allowed by the landlord to holdover, he continues to hold as a tenant, until he is ejected by the landlord in

accordance with the provisions of the Act.

13. There is a dear distinction between a possessory action, such as Section 9 of the Specific Relief Act contemplates, and an action upon title. And when the tenancy of a non-occupancy raiyat is not put an end to, as the law requires, he remains upon the land as a tenant, and necessarily, if he is illegally ejected, he is entitled to claim possession as a tenant, his title being that of a tenant of the land. His position is very different from that of a person, who enters into the land as a trespasser, but who, if evicted illegally, is entitled to be put back in possession according to the provisions of Section 9 of the Specific Relief Act, though he has no title to the land.

14. That section lays down only a summary remedy applicable alike to a person, whether he be a trespasser, a tenant or an owner of the land, when, he is ejected without due course of law. But is this the only remedy which the Legislature has provided for a person, who claims to be a tenant of the land; and who on proof of a subsisting tenancy is entitled to recover possession of the lands? I think not.

15. I may here refer to the provisions of Section 27 of the old Rent Act [Bengal Act VIII of 1869], where the limitation of one year was provided for an action by a tenant, when illegally ejected. And it was held in a series of cases that that section referred to a possessory action against the landlord, and not to a suit where title is set up and possession is asked for in pursuance thereof, and that in such a suit the period of limitation was that provided in the Indian Limitation Act see *Joynti Dasi v. Mahomed Ally Khan* (1882) I.L.R. 9 Calc. 423 and *Basurat Ali v. Altaf Hosain* (1887) I.L.R. 14 Calc. 624.

16. The summary remedy that was provided for a tenant in Section 27 of Bengal Act VIII of 1869 is what is to be found in Section 9 of the Specific Relief Act for all classes of persons. In the present case the plaintiff sought to recover on the strength of his title as an occupancy raiyat, and an issue was raised as to that title. The title, however, has been found on investigation not to be that of a non-occupancy raiyat only. But the result of the trial as to the exact character of his right hardly affects the question of limitation.

17. I have hitherto addressed myself to the question as if the person, who evicted the plaintiff, is the landlord; but here the eviction was by a person, who had no title to the land--a trespasser, as he has been found to be. Conceding that as between a non-occupancy raiyat and the landlord, the former has only a bare possessory right, if illegally ejected, can the same argument apply, if the eviction is caused by a trespasser, the right as between the plaintiff and the trespasser being clearly in the former?

18. Take the case of a non-occupancy raiyat from year to year. Let us assume that in the month of Joisth, when he is holding, as a tenant, he is evicted by a trespasser, and he does not bring his suit for recovery of possession until after six months, hut before the expiry of the year. Take again the case of a tenant who tinder a lease is entitled to hold the land for five years, and the tenant being dispossessed in the middle of the first year by a trespasser does not bring his suit until after six months. According to the argument of the other side, he cannot recover, though there is still a subsisting tenancy right in him. Would the dismissal of his suit exonerate him from the liability to pay rout to his landlord? I doubt whether he would be so exonerated.

19. No doubt the fact that the Legislature has not provided in the Bengal Tenancy Act any period of limitation for the case of a non-occupancy raiyat is rather remarkable, and it is anomalous, as pointed out by me in *Ramdhan Bhadra v. Ram Kumar Dey* (1890) I.L.R. 17 Calc. 926 that a longer period of limitation should be applicable to such a case than in the case of an occupancy raiyat. But we cannot guide. ourselves by such considerations. We have to administer the law as it is.

20. For these reasons I agree with my Lord in holding that the first question should be answered in the negatives, and, so far as the second question is concerned, the limitation I should say is either six or twelve years as provided in the Indian Limitation Act. In either view this suit is within time.

Harington, J.

21. I have read the judgment, which has been delivered by Mr. Justice Ghose, and I agree in that judgment.

Brett, J.

22. I also agree in the judgment of Mr. Justice Ghose, and agree that the question referred should be answered in the manner stated by the learned Chief Justice.

Macleane, C.J.

23. The result is that the appeal must be allowed and the case must go back to the Subordinate Judge to be tried on the merits.

24. The appellant is entitled to his costs in this. Court, including the costs of this reference.

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