

Singh v. Rani Rajkooer (1), but the Privy Council in their judgment in that case refer to the passage in the Vyavastha Darpana of Shamachurn Sircar, in which it is said: "The widow is not entitled to maintenance by residing elsewhere without a cause, if she was directed by her husband to be maintained in the family house," and point out that in that case there was no such direction. The law as laid down in Vyavastha Darpana [238] was also followed by Birdwood and Parsons, JJ., in *Mulji Bhaishankar v. Bai Ujam* (2). In that case they held that the defendant's conduct to the widow was such as to justify her leaving the place mentioned in her husband's will for her residence. Here, although the Judge's remarks in dealing with the costs show that he considered the widow had been to blame, there was no distinct finding whether she had just cause for leaving. We must, therefore, reverse the decree and send the case back for a fresh decision having regard to the above remarks.

Costs of this appeal to abide the result.

Decree reversed.

15 B. 238.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr Justice Telang.

BANDU (*Original Defendant*), *Appellant v. NABA (Original Plaintiff), Respondent.** [25th August, 1890.]

Decree for possession, non-execution of—Title—Rightful owner—Possession—Possession taken by rightful owner without Court's intervention—Trespass.

B. purchased land from M. and subsequently brought a suit against M. to obtain possession. He got a decree, but did not execute it within three years. M. died, and after his death and while his daughter (the plaintiff) was a minor, B. took forcible possession of the land. Eight years afterwards the plaintiff attained her majority, and she then filed this suit to recover the land. The lower Court held that B. having failed to execute his decree for possession was wrong in taking possession during the minority of the plaintiff without the intervention of a Court; that in so doing he was a trespasser, and that the plaintiff, as M.'s heir, was entitled to have possession given to her, until ousted in due course of law.

Held (reversing the decree) that, subject to the provision of s. 9 of the Specific Relief Act I of 1877, there is no reason for holding that in India the rightful owner dispossessing another is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law.

[F., 35 B. 79=12 Bom. L. R. 956 (970)=8 Ind. Cas. 639; Appr., 9 C. W. N. 1061 (1064); R., 36 B. 185=13 Bom. L.R. 1200=12 Ind. Cas. 913; 13 Ind. Cas. 237 =5 S.L.R. 140.]

THIS was a second appeal from the decision of S. Tagore, District Judge of Sholapur.

[239] Suit for possession. The plaintiff claimed, as heir of her father Manku, to recover certain land from the defendant. She alleged that the said land belonged to her father. He sold it to the defendant for Rs. 50, but the latter having failed to pay the price, the land remained with Manku.

* Second Appeal, No. 591 of 1889.

(1) 12 B.L. R. 238 (249).

(2) 13 B. 218 (220).

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The defendant afterwards brought a suit (No. 49 of 1878) against Manku to recover possession of the land, and Manku having died pending suit, the defendant got an *ex parte* decree in his favour; but the defendant failed to execute it within three years and it became inoperative.

Subsequently, however, about nine years previous to this suit, while the plaintiff was still a minor the defendant took possession of the land. The plaintiff alleged that such possession was wrongfully taken, and now sued to recover the land. The plaintiff attained majority a year before filing this suit.

The defendant alleged (*inter alia*) that under his deed of sale he got possession of the land from Manku; that, after he got possession, one Yesubai had caused obstruction to his possession, and that he thereupon had brought a suit against Yesubai and Manku, and obtained a decree; that there was no reason for him to execute this decree, as he was already in possession of the land, and that he had made no attempt to execute the decree, as the heirs of Manku did not cause any obstruction. He further stated that he had paid the purchase-money to Manku.

The Subordinate Judge found that the defendant had not been put in possession under his deed of sale; that after Manku's death, and during the plaintiff's minority, the defendant had taken wrongful possession without executing his decree (No. 49 of 1878), and that he had not certified the fact of his possession to the Court. The Subordinate Judge allowed the plaintiff's claim.

The defendant appealed to the District Court. The District Judge held that the defendant's possession was not lawful so as to give him a right to hold against the plaintiff, and confirmed the decree of the Subordinate Judge.

The defendant appealed to the High Court.

[240] *Mahadev Chimnaji Apte*, for the appellant.—As we failed to execute our decree within three years from its date, our remedy by execution was, no doubt, barred; but this circumstance does not affect our title to the land under the decree. A decree remains alive for twelve years, and till the expiration of that period from the date of the decree our title could not be extinguished. It is not denied that we took possession within twelve years from the date of the decree. We had, therefore, a title of possession. A person in possession having title, though he may have got possession by trespass, may retain the possession on the strength of his title—*Lillu v. Annaji* (1); *The Six Carpenters' Case* (2); *Ex parte Drake* (3); *Narada*, Chap. IV., pl. 12 and 13. The title being substantiated, possession becomes valid—*Stoke's Hindu Law Books*, p. 131. Our possession, therefore, is not unlawful, and we cannot be ousted.

Manekshah Jehangirshah.—If a man after allowing the execution of his decree to be time-barred, takes possession of the land comprised in the decree, he is liable to be evicted as a trespasser. His only remedy is to take possession of the land by executing the decree in the ordinary way. If a decree be barred, the cause of action, as well as a suit based thereon, is barred; and by virtue of the bar the right to take possession becomes extinguished. Section 28 of the Limitation Act (XV of 1877) is applicable to the present case—*Sahad Nasrudin v. Venkatesh Prabhu* (4); *Mirza Mahomed Aga Ali Khan Bahadoor v. The widow of Balmakund* (5).

(1) 5 B. 387 (391).

(2) *Smith's Leading Cases*, Vol. I, pp. 144 (151) (9th ed.).

(3) L.R. 5 Ch. D. 866.

(4) 5 B. 382 (385).

(5) 3 I.A. 241 (251).

Even if the defendant had taken possession, in the way he did, during the period of three years from the date of the decree, his conduct would have been wrongful, *a fortiori* when he takes possession after his remedy was barred. He ought to have taken possession by executing the decree, and not by force.

Mahadev Chimnaji Apte in reply cited *Dinendronath Sannyal v. Ramcoomar Ghose* (1); *The Land Mortgage Bank of India v. Ahmedbhoy Habibbhoy* (2).

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JUDGMENT.

[241] SARGENT, C. J.—The plaintiff seeks to recover possession of land which she says belonged to her father Manku. It appears that defendant had obtained a decree for possession of the land against Manku, but took no steps to execute it. However when Manku died, the defendant took possession without the intervention of the Court, the plaintiff being then a minor. The lower Court of appeal has held that by so doing defendant was a trespasser; that plaintiff, as heir of Manku, was entitled to have possession given her until ousted in due course of law.

In *Pollock on Torts*, p. 312, the English law on the effect of possession obtained by the true owner by peaceful or forcible entry is stated after an examination of the somewhat conflicting authorities to be that the possession of a rightful owner gained by forcible entry is lawful as between the parties, but that he may be punished for the breach of the peace by losing it, besides paying a fine to the king. This latter part of the law is the result of the Statute of 5 Richard II to which we have nothing corresponding in this country. The Indian Legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West, J., in *Lillu v. Annaji*(3).

We must, therefore, reverse the decree of the Court below and send back the case for a fresh decision. Costs to abide the result.

Decree reversed.

(1) 8 I.A. 65 (73)=7 C. 107 (116). (2) 8 B. 35. (3) 5 B. 387 (390, 391).