

**IX.] KRISHNAJI RAMCHANDRA v. ANTAJI PANDURANG 18 Bom. 257**

Government, [256] and not having paid any rent to the plaintiff, cannot affect the relationship of landlord and tenant which admittedly existed between them in 1869.

The finding to be transmitted to this Court within two months. The parties to be allowed to give fresh evidence.

*Case sent back.*

1893  
MARCH 22.

APPELLATE  
CIVIL.

18 B. 250.

18 B. 256.

APPELLATE CIVIL.

*Before Mr. Justice Telang and Mr. Justice Fulton.*

KRISHNAJI RAMCHANDRA (*Original Defendant No. 1*), Appellant v.  
ANTAJI PANDURANG (*Original Plaintiff*), Respondent.\*  
[24th March, 1893.]

*Landlord and tenant—Possession—Adverse possession—Lease—Expiry of lease—Continued possession after expiration of lease—Permissive possession—Tenant's heirs continuing in possession after the expiry of tenancy—Limitation.*

In 1840 the land in dispute was leased to R. for life. R. died in or about 1871, and after R.'s death, his heirs (the defendants) continued in possession without obtaining a fresh lease or paying any rent to the landlord. In 1889 the landlord sued to eject the defendants. The defence was that the suit was barred by limitation.

*Held*, that the suit was not barred. After R.'s death the defendants, though not in possession as tenants, were not trespassers. Their possession was permissive, and not adverse until they expressly set up a title of ownership in the property.

[Overruled, 22 B. 893; F., 24 B. 504 (507); R., 20 B. 759 (763); U.B.R. (1892—1896), Civil, 363 (364); D., 31 M. 163 (167) = 18 M.L.J. 26 = 3 M.L.T. 256.]

SECOND appeal from the decision of J. FitzMaurice, Acting District Judge of Ratnagiri, in appeal No. 298 of 1889.

The plaintiff sued to eject the defendants from the land in dispute.

It appeared that in 1840 one Jankibai, who was then in management of the plaintiff's ancestral property, leased the land to Ramchandra, the adoptive father of defendant No. 1, for life at a yearly rent of Rs. 5. Ramchandra held the property till his death, which occurred in 1871 or thereabouts. On Ramchandra's death, his widow Ramabai and her adopted son defendant No. 1 continued in possession. But they did not obtain a fresh lease, nor pay any rent after Ramchandra's death.

In 1888 the present action of ejectment was brought.

[257] The defendant No. 1 pleaded (*inter alia*) that since Ramchandra's death his possession had been adverse to the plaintiff, and that the suit was, therefore, time-barred. The other defendants did not contest the suit.

The Subordinate Judge was of opinion that defendant's father having come in as a tenant, the tenancy must be presumed to have continued even after his death, and that the mere non-payment of rent did not destroy the tenancy. He, therefore, held that the suit was not barred by limitation, and decreed the plaintiff's claim.

On appeal, the District Judge held that the possession of defendant No. 1 must, on the authority of *Tatia v. Sadashiv* (1) and *Rango Lall v. Abdool Guffoor* (2), be deemed to have been that of a tenant and not

\* Second Appeal No. 483 of 1891.

(1) 7 B. 40.

2) 4 C. 314.

1893. adverse to plaintiff, and that as there was no reliable evidence as to the  
 MARCH 24. character of defendant No. 1's tenancy, it must be presumed that it was  
 a tenancy from year to year. He, therefore, awarded possession of the  
 land in suit.

APPEL.

LATE.

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18 B. 256.

Defendant No. 1 preferred a second appeal to the High Court.

*Ganesh Krishna Deshmukh*, for appellant (defendant).—The suit is barred. The lease granted to Ramchandra expired on his death. His heirs remained in possession, but never attorned to the plaintiff, nor paid any rent to him. Under these circumstances art. 139 of the Limitation Act (XV of 1877) applies. According to that article, the plaintiff ought to have sued within twelve years from the determination of the lease, that is, within twelve years after Ramchandra's death. Ramchandra died more than twenty years before suit. The cases relied on by the lower Court do not apply. They are cases of tenants holding over after the determination of the tenancy. The present is not such a case. Moreover, if the lower Court's finding be correct, that the defendant is a yearly tenant, then he is entitled to a legal notice to quit. No notice has been given, and the suit must fail.

*Manekshah Jehangirshah*, for respondent.—The point as to the necessity of a notice to quit was not raised in either of the [258] Courts below, and cannot be raised for the first time here. The defendant's case from the commencement was that he was the owner, and not merely a tenant, of the land in dispute. That is a clear repudiation of the landlord's title. The defendant is not, therefore, entitled to a notice to quit. Defendant's father was our tenant. After his death his family continued in possession on the same terms as before, namely as tenants. Their possession was, therefore, not adverse. Mere non-payment of rent does not make the tenants' possession adverse—*Tatia v. Sadashiv* (1).

#### JUDGMENT.

TELANG, J.—The original tenant in this case was Ramchandra, and, according to the finding of the District Judge, his tenancy expired with his death "some nineteen or twenty years ago." This finding has not been impeached in argument before us. The District Judge also appears to hold that the defendants were living in the demised premises with the deceased Ramchandra during his lifetime and have continued to live in those premises after Ramchandra's death. And the question is, what is the character of the defendant's possession after the expiry of Ramchandra's tenancy? The District Judge holds that he was not in adverse possession, and relies on the case of *Rungo Lall v. Abdool Guffoor* (2). That case is not, however, conclusive on the question which arises here. It was there held, no doubt, that the relation of landlord and tenant once created between certain parties continues as between them and their "representatives in title until it is proved to have ceased," and that the defendant was bound to show that it has ceased by some affirmative proof. But here such proof is given, and the District Judge himself has found that the tenancy ceased on Ramchandra's death. The case of *Tatia v. Sadashiv* (1), which the Judge also relies on, is distinguishable, as it was merely the ordinary case of a tenant holding over after the expiry of his tenancy. That always has been treated as not a case of adverse possession, but it has no bearing on the nature of the possession of one who never was a tenant at all.

(1) 7 B. 40.

(2) 4 C. 314.

Although, however, the authorities relied on by the District Judge do not really support the proposition laid down by him, we [259] think that proposition to be correct. In *Hellier v. Sillcox*(1) the tenant for life was in possession of certain premises, and the defendant lived with her in those premises until the death of the tenant for life, and continued to do so after her death without coming to any arrangement with the reversionary heir, the plaintiff. The plaintiff having subsequently brought an action for use and occupation, it was argued that the action should have been in ejectment and not for use and occupation. Lord Campbell, however, with the concurrence of the rest of the Court of Queen's Bench, said, after time taken to consider, that the action for use and occupation would lie, "as the defendant occupied the cottage by the plaintiff's permission. The plaintiff was the reversioner, and the defendant, who had married the daughter of the tenant for life, lived in the cottage with her and remained in possession of it after her death. Therefore he was not a trespasser, and he set up no adverse title to the premises." We think we should follow that decision and hold that in this case the District Judge's finding is correct in so far as it decides that after the death of Ramchandra the possession of defendant was not adverse, but permissive only until she expressly set up a title of ownership in the property.

It has, however, been argued for the defendant, that the plaintiff is not entitled to succeed in this case, on the ground of want of legal notice to quit. No doubt it has been held that this point may be taken in second appeal though not raised before—*Dodhu v. Madhavrao* (2). But in this case there is no tenancy, and no question of notice to quit, therefore, arises. Besides, there has been here a distinct repudiation of the plaintiff's title by the defendant (see Ex. 13), and under such circumstances the latter is not entitled to any notice to quit even if the relation between him and the plaintiff was taken to be that of landlord and tenant. We must, therefore, confirm the decree of the District Court with costs.

*Decree confirmed.*

18 B. 260.

[260] APPELLATE CIVIL.

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

HARISHANKAR JEBHAI (Original Plaintiff), Appellant v. NARAN KARSAN AND ANOTHER (Original Defendants), Respondents.\*

[28th March, 1893.]

*Decree—Execution of decree—Attachment—Order for removal of attachment—Suit for a declaration that the property was liable to attachment and sale—Suit to set aside an order removing attachment—Defendant's adverse possession—Section 246 of the Civil Procedure Code (Act VIII of 1859)—S. 283 of the Civil Procedure Code (Act XIV of 1882)—Article 15, sch. II of the Limitation Act (IX of 1871)—Article 11, sch. II of the Limitation Act (XV of 1877).*

The plaintiff obtained a decree against one Ishvar, and in execution attached the property in dispute. The defendants intervened, and obtained an order for the removal of the attachment on the 11th August, 1888. On the 13th August, 1889, the plaintiff instituted this suit for a declaration that the property belonged to his judgment-debtor (Ishvar) and as such was liable to attachment and sale. The defendants pleaded that they had been in possession of the property for more than twelve years, prior to the institution of the suit, and that the suit was, therefore, barred. The Judge rejected the plaintiff's claim.

\* Second Appeal No. 927 of 1891.

(1) 19 L.J.Q.B. (N.S.) 295.

(2) 18 B. 110.