

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Nawab Muhammad Amanulla Khan v. Badan
Singh and Others, from the Chief Court of the
Punjaub; delivered April 10th, 1889.*

Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

THE Plaintiffs in this suit are descendants of one Lutuffulla Sadik, who held the land which was the subject of the suit as Mafi. The earliest sanad appears to have been, as far as the evidence shows, a grant by one Afiz Khan in the sixth year of the reign of the King of Delhi. It is not material when the title commenced. This Mafi was resumed in 1837, and at that time the ancestors of the Plaintiffs, who had the Mafi, were offered an engagement for the land revenue. They on the 5th of April 1838 declined to take the land and engage for payment of the revenue. Then the Defendants, who are called in the judgments of the lower courts the Lambardars, and were the representatives of the villagers, and held a large quantity of land in the village, undoubtedly as proprietors, were asked if they would take up the engagement. They appear, in the first instance, to have declined to do so, alleging that they had got a settlement which included this land. However, it was found that this was not correct, and for a time the settlement operations were discontinued, and the Government appears to have held the land as khas. In 1842 a settlement was made, and then an engagement

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was made with the Lambardars, or representatives of the villagers for the whole of the village, including the land which is the subject of this suit and making no distinction between the way in which this land and the other land, of which the villagers were undoubted proprietors, was to be held. That settlement was to last for 30 years, and would expire in 1872. Steps do not appear to have been taken immediately upon the expiration; but, on a revision of settlement in 1879, the Plaintiffs applied for what they called a cancelment of the farm to the Defendants, and to have possession of the land as their ancestral estate. The Defendants refused to surrender the land, and consequently the Plaintiffs were referred to the Civil Court, and then the present suit was brought.

Two questions were raised in the suit. One was, whether the Plaintiffs—or rather their ancestors,—were the proprietors of the land, as they alleged; and the other was whether the suit was barred by the law of limitation.

Upon the first question the Commissioner, before whom the case came by way of appeal, and whose finding on this matter was conclusive in the further appeal to the Chief Court, found that the Plaintiffs were the proprietors; and no question remains about that.

The question which has now to be determined is whether the suit is barred by the law of limitation. The Chief Court, upon the further appeal from the decision of the Commissioner, has held that it is barred. The Act applicable to the case is Act 15 of 1877, and the Article is No. 142, which says that for possession of immoveable property when the Plaintiff, while in possession of the property, has been dispossessed, or has discontinued the possession, the time from which the period allowed for bringing the suit begins to run

is the date of the dispossession or discontinuance. It appears to their Lordships to be clear that when there was this refusal on the part of the Plaintiffs, or their ancestors, to make the engagement for the payment of the revenue, and the Government made the engagement with the villagers—the Defendants—there was a dispossession or a discontinuance of possession of the Plaintiffs within the meaning of this Article.

It is to be observed that the Lower Courts in their judgments treat it as being a dispossession. The Commissioner, where he deals with the facts of the case, says:—"Independently therefore of the presumption afforded by Regulation 31 of 1803, the Plaintiffs have, in my opinion, afforded most satisfactory evidence of their character as proprietors prior to the resumption of the lands in free tenure." Then he goes on:—"and their dispossession for refusing to engage at settlement." In his opinion what took place was that at the time when they so refused they became dispossessed. Then Mr. Justice Plowden, in the passage which is quoted from his judgment, treats it also as a dispossession, for he says:—"When, upon the occasion of a settlement, a proprietor is in proprietary possession of the estate, and asserts his proprietary title, and it is formally recognised, but in consequence of his refusal to engage for the revenue he is excluded from the enjoyment of his estate"—which was the case here—"which is therefore transferred to a farmer for a defined period, it is intelligible that there is not such a discontinuance of possession or dispossession as would support a plea of limitation"; and he goes on to give as the reason that the dispossession is not adverse, which word is not in Article 142. The

Chief Court in their judgment say also:—
 “All this shows that in 1838 Plaintiffs were
 “undoubtedly proprietors; but the land is
 “now, and has been since 1842, equally
 “undoubtedly in the possession of the Defen-
 “dants, who have exercised over it all the rights
 “of proprietors.” There has been no possession
 of any description in the Plaintiffs or their
 ancestors since the period of the engagement
 with the Defendants; and whether any proprie-
 tary right may have existed is not the question.
 It is whether there has been a dispossession
 or discontinuance, which there clearly was. No
 doubt the proprietary right would continue
 to exist until by the operation of the law of
 limitation it had been extinguished; but upon
 the question whether the law of limitation
 applies, it appears to be clear that it comes
 within the terms of the Article 142, and if there
 has been any doubt in the minds of the courts in
 the Punjab as to what was the effect of the law of
 limitation in cases of this description, it seems to
 have arisen from the introduction of some opinion
 that there must be what is called adverse posses-
 sion. It is unnecessary to enter upon that
 inquiry. Article 144 as to adverse possession
 only applies where there is no other article which
 specially provides for the case.

In this case their Lordships think Article 142
 does provide for the case, and that the suit is
 barred by the law of limitation. Consequently
 the decision of the Chief Court should be affirmed
 and the appeal dismissed, and their Lordships
 will so humbly advise Her Majesty.