1958

February 25.

SHREEMATI KASHI BAI

v.

SUDHA RANI GHOSE AND OTHERS

(BHAGWAT, L. KAPUR and GAJENDRAGADKAR JJ.)

Adverse possession—Coal mine—Trespass and intermittent working—Whether can constitute adverse possession.

The appellants and the respondents were lessees of coal mining rights in adjoining areas. In 1917, the predecessors in interest of the appellants trespassed into a portion of the lands leased to the predecessors in interest of the respondents, sank two inclines and two airshafts and dug out coal therefrom. There were no mining operations till 1923 when they were restarted and continued till 1926, and were re-commenced in 1931 and carried on till 1933. In 1939 the mine was worked for a short time. In 1944 the operations were recommenced by the appellants. In 1945 the respondents brought a suit for fixation of the intermediate boundary, for possession of the area trespassed upon and for compensation for coal illegally removed by the appellants. The appellants contended, *inter alia*, that they had been in sole, exclusive, uninterrupted possession of the area in dispute openly to the knowledge of the respondents and had acquired title by adverse possession:

Held, that the intermittent working of the mine in the manner and for the period carried out by the appellants or their predecessors in interest was wholly insufficient to establish possession which could constitute adverse possession. During the period when there were no mining operations no kind of possession of the appellants was proved and the presumption that during such periods possession reverted to the true owner was not rebutted.

Nageshwar Bux Roy v. *Bengal Coal Co.*, [1930] L.R. 58 I.A. 29 and *Secretary of State for India* v. *Debendra Lal Khan*, [1933] L.R. 61 I.A. 78, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 118-119 of 1956.

Appeal from the judgment and decrees dated September 27, 1951, of the Patna High Court in Appeal from Original Decrees Nos. 252 and 254 of 1948, arising out of the judgment and decrees dated May 11, 1948, of the Court of Subordinate Judge, Dhanbad in Title Suits Nos. 16 and 50 of 1945 respectively.

M. C. Setalvad, Attorney-General for India, Kshitindra Nath Bhattacharya, S. N. Andley, J. B. Dadachanji and *Rameshwar Nath*, for the appellant.

N. C. Chatterjee, S. C. Bannerjee and *P. R. Chatterjee*, for respondents Nos. 7 to 13.

P. K. Chatterjee, for respondents Nos. 2-4 and 6 (Minors).

Gauri Dayal, for respondent No. 5.

1958. February 25. The following Judgment of the Court was delivered by

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KAPUR J.—In these two appeals brought by leave of the Patna High Court against a judgment and two decrees of that court a common and the sole question for decision is one of adverse possession. Two cross suits were brought in the Court of the Subordinate Judge, Dhanbad, raising common questions of fact and law. The appellant and respondent Manilal Becharlal Sengvi were defendants in one (Suit No. 16 of 1945) and plaintiffs in the other (Suit No. 50 of 1945). Respondents Nos. 1—3 were the plaintiffs in the former suit and defendants in the latter. The other respondents were defendants in the latter suit and were added as plaintiffs at the appellate stage under O. 1, r. 10, Code of Civil Procedure in the appeal taken against the decision in the former suit. Both the suits were decreed against the appellant and respondent Manilal Becharlal Sengvi who took two appeals to the High Court at Patna. Both these appeals were dismissed by one judgment dated September 27, 1951, but two decrees were drawn up. Against this judgment and these decrees the appellant has brought two appeals to this Court which were consolidated and will be disposed of by this judgment.

The facts necessary for the decision of these two appeals are that on November 26, 1894 Ganga Narayan Singh, a zamindar and proprietor of pargana Katras granted to Ram Dayal Mazumdar a lease of "the coal and coal mining rights" in two plots of land, one in mouza Katras and the other in mouza Bhupatdih. On November 6, 1894 he granted a similar lease in plots

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contiguous to the plots in the lease mentioned above to Bhudar Nath Roy. In Suit No. 32 of 1896 boundaries between these two sets of plots were fixed and this was shown in a map which was incorporated in the decree passed in that suit. On the death of Ram Dayal, his sons Prafulla, Kumud, Sarat, Sirish and Girish inherited the leasehold rights which they on October 19, 1918, granted by means of a registered patta and kabulliat to Lalit Mohan Bose for a term of 999 years. One Bennett who along with one Bellwood had obtained a coal mining lease from Raja Sakti Narayan Singh of Katrasgarh on September 5, 1917, trespassed on the northern portion of the land within the area leased to Lalit Mohan Bose and sank two inclines and two airshafts and dug out coal from this area. This gave rise to a dispute between the parties which was amicably settled and the area trespassed was returned to the possession of Lalit Mohan Bose. This fact was denied by the appellant and Manilal Becharlal Sengvi respondent in their written statement and in their plaint. Lalit Mohan Bose died in 1933 leaving a will of which the executors were his widow, Radha Rani and his brother Nagendra Nath Bose. They leased out 17 bighas of land in possession of Lalit Mohan Bose to Keshabji Lalji in 1933. The remaining portion of the area leased to Lalit Mohan Bose was given on lease on March 15, 1938, to Brojendra Nath Ghose and Vishwa Nath Prasad respondents and to Ram Chand Dubey but the possession thereof had been given to them in July 1938 and they (the above two respondents) and Ram Chandra Dubey carried on colliery business in the name and style of West Katras Colliery. On the death of Ram Chandra Dubey his estate was inherited by his sons and widow who on June, 25, 1944, sold their right, title and interest to Nagendra Nath Bose. These three, i.e., Brojendra Nath Ghose, Vishwa Nath Prasad and Nagendra Nath Bose were the plaintiffs in Suit No. 16 of 1945.

As stated above Raja Sakti Narayan Singh leased an area of 256 bighas to Bennett and Bellwood on September 5, 1917, and they assigned their rights to

the New Katras Coal Company Limited. This Company worked the coal mine for some time but went into liquidation and in Execution Case No. 293 of 1922 the right, title and interest of the company were sold and purchased by Nanji Khengarji father-in-law of Shrimati Kashi Bai appellant and by one Lira Raja. In August 1923 Nanji Khengarji and Lira Raja effected a partition, the western portion of the leased coal field fell to the share of Nanji Khengarji and the eastern portion to Lira Raja. The former carried on the business in the name and style of Khengarji Trikoo & Co. and the Colliery came to be known as Katras New Colliery. On the death of Nanji Khengarji in 1928 his son Ratilal Nanji inherited the estate and on his death in September 1933 the estate passed to the appellant Sreemati Kashi Bai, widow of Ratilal. In December 1944 she (Sreemati Kashi Bai) entered into a partnership with Manilal Becharlal Sengvi respondent.

On March 24, 1945 Brojendra Nath Ghose, Vishwa Nath Prasad and Nagendra Nath Bose respondents Nos. 1—3 as plaintiffs Nos. 1—3 brought a suit (Suit No. 16 of 1945) against Sreemati Kashi Bai, defendant No. 1, now appellant and against Manilal Becharlal Sengvi defendant No. 2 now respondent No. 10 for fixation of the intermediate boundary and for possession of the area trespassed upon by the defendants and for compensation for coal illegally removed by the latter and also for an injunction. They alleged that the defendants had wrongfully taken possession of the area in dispute shown in the map attached to the plaint and had illegally removed coal from their mine. The defendants in their written statement of June 29, 1945, denied the allegations made by the plaintiffs. They pleaded that the area in dispute was acquired by Nanji Khengarji and Lira Raja and had been worked by them and they had been in sole, exclusive, uninterrupted and undisturbed possession of the area openly to the knowledge of the plaintiffs in that suit and had therefore acquired title by adverse possession. The claim of ownership which they had set up as a result

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of acquisition from Bennett and Bellwood was negatived by the courts below and is no longer in dispute before us, the sole point that survives being one of adverse possession.

The cross suit No. 50 of 1945 was brought by the defendants in Suit No. 16 of 1945, i.e., Shrimati Kashi Bai (appellant) and Manilal Becharlal Sengvi (respondent) against the three plaintiffs of Suit No. 16 of 1945 (respondents Nos. 1 to 3) and against heirs of Lalit Mohan Bose and against Purnendu Narayan Singh son of the original grantor Raja Sakti Narayan Singh. The allegations by the plaintiff in this suit (No. 50 of 1945) were the same as their pleas as defendants in Suit No. 16 of 1945. The two suits were tried together with common issues. The learned Subordinate Judge decreed Suit No. 16 of 1945 and dismissed Suit No. 50 of 1945 which were thus both decided in favour of respondents Nos. 1 to 3. He held that the land in suit was included in the area leased to respondents Nos. 1 to 3, i.e., Brojendra Nath, Vishwa Nath Prasad and Nagendra Nath Bose and therefore the area in which two inclines of seam No. 9 were situate formed part of the area leased to them and that encroachment by the appellant and Manilal Becharlal Sengvi respondent on the land in dispute was proved. As to adverse possession he held that the two inclines and airshafts had been sunk in 1917 by Bennett in seam No. 9; that there had been no continuous working of the seam by Khengarji Trikoo & Co., except from the year 1923 to 1926 and from 1931 to 1933, working was again begun in 1939 but how long it was continued had not been proved and that the working of this seam had restarted in 1944. He also found that the disputed area was confined to seam No. 9. From these facts he was of the opinion that there was no dispossession of the respondents Nos. 1 to 3 and no adverse possession had been established as against them. He further held that the working of a part of seam (No. 9) would not give to the trespasser the right to the entire seam even if continuous possession was proved. In regard to compensation the learned Subordinate Judge held that

respondents Nos. 1 to 3 were entitled to it as from December 1944 and the amount would be determined by the appointment of a Commissioner in a subsequent proceeding.

The High Court on appeal confirmed the findings of the trial Court and held that the land in dispute was part of the land leased to respondents Nos. 1 to 3; that the appellant and Manilal Becharlal Sengvi respondent had encroached upon the land in dispute; that the working of the seam had not been continuous and it had only been worked for the periods mentioned above. The High Court also held that even if there was continuous possession and working of the mine no title by adverse possession could be acquired to the whole of the mine. In the High Court the validity of the lease in favour of the respondents Nos. 1 to 3 was raised because of s. 107 of the Transfer of Property Act but as the question had not been raised or agitated in the trial Court, the High Court allowed defendants 4 to 10 of Suit No. 50 of 1945 to be added in the appeal arising out of Suit No. 16 of 1945 "for complete adjudication of the issues and to avoid multiplicity of proceedings." This question is also no longer in dispute before us. The appellant has brought two appeals against the judgment and two decrees of the High Court of Patna. As the question of ownership of the land in dispute has been decided in favour of the respondents by both the courts below, that question has not been raised before us and the controversy between the parties is confined solely to the question of adverse possession.

On behalf of the appellant the learned Attorney-General submitted that the carrying on of the mining operations in the area in dispute even though intermittent as found by the courts below could only lead to one inference that the possession of the area as well as of the mine was of the appellant and as she had prescribed for the requisite period of 12 years, her possession had matured into ownership by adverse possession. In our opinion the operations carried on by the appellant were inconsistent with the continuous, open and hostile possession or with the assertion of

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hostile title for the prescribed period of 12 years necessary to constitute adverse possession. It was contended that for the purpose of adverse possession in regard to a coal mine it was not necessary that it should have been worked for 12 years continuously and it was sufficient if the appellant had carried on mining operations for a period of 12 years even with long stoppages as in the instant case. But we are unable to accept this contention. Even though it may not be necessary for the purpose of establishing adverse possession over a coal mining area to carry on mining operation continuously for a period of 12 years, continuous possession of the mining area and the mine would be a necessary ingredient to establish adverse possession. What has been proved by the appellant is that the two inclines opened by Bennett were worked in 1917 or 1918 by the predecessor in interest of the appellant, there were no mining operations till 1923 when they were restarted and were continued till 1926. The operations ceased in 1926 and were recommenced in 1931 and carried on till 1933 when they ceased again till 1939 and whether they were carried on in 1939 or not is not quite clear but there were no operations from 1939 to 1944 when they were recommenced by the appellant. During the period when there were no mining operations no kind of possession of the appellant has been proved and thus the presumption of law is not rebutted that during the period when the operations had ceased to be carried on the possession would revert to the true owner.

Nageshwar Bux Roy v. *Bengal Coal Co.* (1) which was relied upon by the learned Attorney-General does not support his contention. In that case the company claiming adverse possession had placed facts which were consistent with the assertion of rights to minerals in the whole village to which the company claimed adverse possession. They openly sank pits at three different places, two of them being 1/2 mile distant from the 3rd. The company selected the places where they were to dig up the pits at their own discretion,

(1) [1930] L.R. 58 I.A. 29.

brought their plant or machinery on the ground and erected bungalows for their employees. There was no concealment on the part of the company and they behaved openly as persons in possession of not one pit but all mineral fields underlying the whole village and they throughout claimed to be entitled to sink pits any where in the village they chose. The company was under a *bona fide* belief that under their lease they were entitled to work the minerals any where in the area. In these circumstances the Privy Council held the suit to be barred by Art. 144 of the Limitation Act as the company had been in adverse possession of the minerals under the whole village for more than 12 years. It was pointed out by Lord Macmillan at p. 35, "possession is a question of fact and the extent of possession may be an inference of fact". And at p. 37 it was observed :

"Their Lordships are not at all disposed to negative or to weaken the principle that as a general rule where title is founded on an adverse possession the title will be limited to that area of which actual possession has been enjoyed. But the application of this general rule must depend upon the facts of the particular case."

The finding in favour of adverse possession in that case must be confined to the facts of that particular case.

Another case relied upon by the learned Attorney-General was *Secretary of State for India* v. *Debendra Lal Khan* (1). There a zamindar claimed title to a fishery in a navigable river by adverse possession against the Crown. It was held that possession may be adequate in continuity so as to be adverse even though the proved acts of possession do not cover every moment of the period. That was a case dealing with fisheries. It is true that to establish adverse possession nature of possession may vary. In the instant case no such possession has been proved which taking into consideration the nature of possession and the nature of the object possessed would lead to the only inference that the appellant had perfected her

(1) [1933] L.R. 61 I.A. 78.

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title by adverse possession. Intermittent working of the mine in the manner and for the period described above is wholly insufficient to establish possession which would constitute adverse possession or would lead to an inference of adverse possession and we are in agreement with the view expressed by the High Court and would therefore dismiss these appeals with costs. One set of costs between the two appeals except as to Court-fees.

Appeals dismissed.

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March 10.

EARNEST JOHN WHITE

v.

MRS. KATHLEEN OLIVE WHITE AND OTHERS

(BHAGWATI, J. L. KAPUR and GAJENDRAGADKAR JJ.)

Divorce—Adultery—Standard of proof—Principle—Direct evidence if imperative—Finding of fact when can be interferred with—Divorce Act (IV of 1869), *ss.* 14 *and* 7.

The appellant sued his wife for dissolution of marriage on the ground of adultery.

On the evidence the trial court found that it was not possible to hold that adultery had been committed, though it found that one of the letters contained "a large substratum of truth". The High Court in appeal concurred with the decision. On appeal to the Supreme Court it was contended for the appellant that the finding of the courts below was vitiated because certain pieces of evidence had been misread, and some others ignored. As a matter of legitimate and proper inference the Court should not have arrived at any other conclusion, but that the wife was guilty of adultery with respondent No. 2. The evidence showed that the wife went to Patna and stayed in a hotel with respondent No. 2 under an assumed name, that they occupied the same room in the hotel, that the conduct of the respondent indicated a guilty inclination, and that so far as the wife was concerned, her conduct was entirely consistent with her guilt:

Held, that, the nature of the evidence adduced was such as would satisfy the requirements of s. 14 of the Divorce Act, and that the finding of the Courts below that an inference of adultery could not be drawn therefrom must be set aside.

Although it is not usual for the Supreme Court to interfere