We did not hear the learned counsel on the merits of the case under s. 504 of the Code and accept the finding of the courts below.

In view of the considerations mentioned, no interference is possible with the acquittal of the respondent No. 2 on merits. It is, therefore, not necessary to decide the first question raised for the appellant.

We accordingly dismiss the appeal.

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v.

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April 25.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Land Reforms—Lands mortgaged—After redemption possession sought but refused by—Persons in possession vacate—Claim of occupancy right—Right by adverse possession—Property vesting in state—Construction of Statute—Suit lands if in "khas possession"—Bihar Land Reforms Act, 1950 (XXX of 1950), ss. 2. (k), 3 (1), 4,6—Indian Limitation Act, 1908 (IX of 1908), art. 144.

The appellants' ancestors had executed a registered *rehan* bond of the suit land along with other lands. In 1941 the appellants paid off the amount due on the *rehan* bond and entered satisfaction on the bond. On the redemption of the bond the appellants sought to get possession of the suit land. These lands were in the possession of Respondents 1 and 2 who refused to surrender possession claiming title on the basis of their being entitled to occupancy rights in the lands.

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The appellants then filed a suit alleging that the suit lands were *zeraiti* lands in regard to which they were *malika*, that respondents 1 and 2 were trespassers who had no occupancy rights and prayed for declaration of title, recovery of possession and mesne profits. Apart from their claim that they were *raiyati* tenants entitled to occupancy rights respondents 1 and 2 contended that the suit was barred by limitation by reason of adverse possession.

The Trial Court found all the substantial issues in favour of the present appellants, rejected the plea of adverse possession and limitation raised by the respondents and decreed the suit as prayed for. Thereupon the present respondents filed an appeal before the High Court. While the appeal, was pending the Bihar Land Reforms Act, 1950, came into force. Section 3 of this Act p ovided for the vesting of the estates or tenures of proprietors in the State. Section 6 however contained certain savings. When the appeal came for hearing in 1957 the respondents contended that by reason of the Government Notification in 1955 the suit lands had vested in the State under s. 3 of the Act and since the suit was in substance one for ejectment based on the title of the present appellants and the appellants having lost their title by reason of the vesting the appeal should be dismissed. The High Court found that the present appellants were entitled to get a declaration of title and to get mesne profits up to the end of December, 1954. But the suit lands having vested in the State the decree for possession given in favour of the appellants by the trial court was set aside. The present appeal is against the decree of the High Court setting aside the decree for possession passed by the trial court filed with a certificate granted by the High Court.

On behalf of the appellants it was contended before this Court that in view of the concurrent findings by the courts below that the lands were the *zeraiti* land of the appellants they would not vest in the State because of the saving in s. 6 of the Act. It was their case that they should be deemed to have been in "khas possession" of the lands under s. 6 (1) (c). Relying on the Full Bench decision of the Patna High Court in *Mahanth Sukhdeo Das* v. *Kashi Prasad Tiwari*, A.I.R. 1958 Pat. 630, they contended that the expression "khas possession" had to be understood as meaning not merely actual physical possession as defined in s. 2 (k) of the Act but also cases where a person was constructively in possession, the physical possession being in some other who held the property derivatively from him or in trust for him

or on his behalf or with his permission—express or implied. Relying on a decision of the Allahabad High Court in I.L.R. 1933 All. 97 it was contended that where a mortgagee continued in possession of property usufructually mortgaged to him, even after the mortgage was paid and discharged the property remained in the "Khas Possession" of the mortgagor. The respondents however contended that this was not a case of a mortgagee remaining in possession after payment of the debt without anything more but of tenants who claimed the right to remain in possession of the property by asserting a title which was as much against the mortgage as against the mortgagor.

Held that the possession of respondents 1 and 2 in the present appeal was in their own right and adverse to the appellants, even on the case with which the appellants themselves come to the court.

It was on the basis of their possession being wrongful that a claim was made against them for mesne profits. In the above circumstances it is not possible for the appellants to contend that these tenants were in possession of the property on behalf of the mortgagor and in the character of their rights being derived from the mortgagor. Section 6 (1) (c) cannot in terms, therefore, apply since the mortgagor-mortgagee relationship did not subsist on January 1, 1955.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 195 of 1961.

Appeal from the judgment and decree dated September 3, 1957, of the Patna High Court in Appeal from original decree No. 42 of 1948.

Sarjoo Prasad and *Mohan Behari Lal* for the appellant.

A. V. Viswanatha Sastri and *D. Goburdhun*, for the respondents Nos. 1 to 3 and 5.

1963. April 25. The Judgment of the Court was delivered by

AYYANGAR J.—The proper construction of the vesting sections of the Bihar Land Reforms Act, 1950 *Ayyangar J.*

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(hereinafter called the Act), and in particular the scope of s. 6 thereof is the principal point that arises in this appeal which is before us on a certificate of fitness granted under Art. 133(1) by the High Court of Patna.

The plaintiffs are the appellants before us. The subject matter of the suit is a piece of land of about 14 bighas and 5 kathas in khata No.741 in mauza Chaugain. The relief claimed in the suit was a declaration that the land referred to was the *zeraiti* land of the plaintiffs and that the persons who were impleaded as the defendants 1st and 2nd parties had no right or title thereto and for recovery of possession of the said land by dispossessing the defendants who were in actual possession thereof. There was also a claim to a decree for mesne profits for three years before the suit and for an enquiry into future profits under O. XX. r. 12 C. P. Code. We shall now state a few facts which are necessary to understand the contentions which have been urged in this appeal. The material allegations, in the plaint were these: The plaintiffs' ancestors had executed a registered *rehan* bond on October 28, 1897 of lands including those now in suit, in favour of the ancestors of the persons who were impleaded as defendants 3rd parties. During the subsistence of this mortgage the plaintiffs' ancestors executed another registered *rehan* bond in June, 1907 in favour of persons who were the ancestors of the persons impleaded as defendants 4th parties, a portion of the mortgage money being left with these second mortgagees to enable them to redeem the earlier mortgage. This redemption was effected and the defendants 4th party got into possession of the entirety of the property mortgaged to them. On June 8, 1941, the plaintiffs paid off the amount due on the *rehan* bond of 1907 and entered satisfaction on the bond making an endorsement thereon. On such redemption the plaintiffs obtained possession of a portion of the lands under mortgage

but they could not obtain possession of the lands in suit. These lands were in the possession of the defendants 1st and 2nd parties who claimed title on the basis of their being entitled to occupancy rights in the lands and they refused to surrender actual possession of the land to the plaintiffs. They had asserted that the suit lands were not *zeraiti* lands in regard to which the plaintiff as maliks would be entitled to 'khas possession', but were raiyat-lands from which they, the tenants in cultivation could not be evicted. On this claim being made and resistance offered to the plaintiffs taking khas possession, the present suit was filed for the reliefs already set out.

The defendants 3rd and 4th parties who were the representatives of the mortgages under the *rehan* bonds of 1897 and 1907 hardly came into the picture as their claims under their mortgages have long ago been satisfied. The contest was therefore limited to the tenant-defendants—defendants 1st and 2nd parties and of these, it is sufficient to confine attention to the defendant 2nd parties who are in actual possession of the lands at the date of the suit. It need hardly be mentioned that by their written statement these defendants questioned the tenure of the lands, and asserted their rights to remain in possession despite the discharge by the payment of the *rehan* of 1907.

There were several issues raised which reflected these pleadings. But what we are now concerned with are the issues which relate to the following: (1) Was the suit-land *zeraiti* land as claimed by the plaintiffs or was it raiyati-land as pleaded by the contesting defendants, (2) When did the defendants 1st and 2nd parties first come into possession and cultivation of the land. It was the case of the defendants that they had been in possession and occupation of the land as tenants long before the *rehan* of 1897—even 30 years earlier, whereas it was the case of the plaintiffs that they were inducted to the land for

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the first time as tenants of the mortgagees under the first *rehan* of 1897 and that they were originally brought in as tenants for a term of 7 years which expired in or about 1912-13, (3) Had the plaintiffs lost title to the land and their suit for recovery thereof barred by limitation by reason of the contesting defendants having perfected their title by adverse possession? The contesting defendants put forward a claim that they had perfected their title by adverse possession for over the statutory period of 12 years under Art. 144 of the Limitation Act and the point in controversy was when the period of this adverse possession started and whether computed on that footing the suit was barred by limitation.

A large mass of documentary and oral evidence was led by the parties and this was the subject of elaborate consideration by the learned trial Judge. The findings recorded by him were: (1) that the land was the *zeraiti* land of the plaintiffs and had been in their acutal possession and not in the possession of any tenants of theirs at the date of the 1st *rehan* in 1897. This necessarily meant the rejection of the case put forward by the defendants that their predeces sors were in occupation of the lands even before the *rehan* of 1897, (2) the defendants came into possession of the land under a lease deed executed about the year 1906 for a term of years and that that lease deed expired in 1912-13 and that thereafter they continued as tenants of *zeraiti* land and could not, therefore, claim any right of occupancy in the land, (3) The defendants 2nd party who were in actual occupation were, no doubt, in possession of the suit lands under a claim to hold them on their own behalf but their possession could not be adverse to the plaintiffs until the latter got the right to resume possession which was only in June 1941 when they paid and discharged the amount due under the mortgage and so obtained the right to possession. As the suit was brought within 12 years from that date it was within

time. On these findings the learned trial Judge, by his judgment dated October 10, 1947, decreed the suit, as prayed for.

The contesting defendants—defendants 2nd party filed an appeal to the High Court challenging these findings. Pending the appeal they applied for and obtained stay of delivery of possession and by virtue of the order the defendants 2nd party continued to remain in possession. While the appeal was pending the Bihar Land Reforms Act (Act XXX of 1950) was enacted and it came into force on September 25, 1950. Section 3 (1) of the Act enacted :

> "The State Government may, from time to time by notification, declare that the estates or tenures of a proprietor or tenure-holder, specified in the notification, have passed to and become vested in the State."

It was common ground that the plaintiffs were "proprietors" within that Act. Under a notification published under s. 3 (1) of the Act the plaintiffs' estate became vested, as and from January 1, 1955, in the State. The legal effect of a notification under s. 3 (1) is set out in s. 4 which enacts:

> "4. Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of Section 3, the following consequences shall ensue, namely:—
>
> (a) such estate or tenure including the interests of the proprietor or tenure holder in any building or part of a building comprised in such estate or tenure..... as also his interests in all sub-soil..... shall, with effect from the date of vesting, vest absolutely in the State free from all

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encumbrances and such proprietor or tenure-holder shall cease to have any interests in such estate or tenure, other than the interests expressly saved by or under the provisions of this Act."

The rest of the section is not material. The Act, however, contains in s. 6 a saving as to certain lands of the proprietor or tenure-holder but to this we shall refer later.

The appeal came on for hearing before the High Court in September, 1957. At that stage learned Counsel for the tenant-defendants who were the appellants before the High Court, raised a plea that the suit which was in substance one for ejectment based on the title of the plaintiffs should fail and be dismissed because the plaintiffs had lost their title to the property which vested in the State by virtue of the notification under s. 3 of the Act with the consequence specified in s. 4. This was contested by the learned Counsel for the plaintiffs who submitted that the Court could not take notice of the legislation which came into force during the pendency of the appeal but that the Court should decide on the rights of parties with reference to the law as it stood at the date of the suit. The learned Judges, however rejected this last contention and held that the rights of the parties had to be decided on the law as it existed on the date of their judgment and so the effect of the Act on the title of the plaintiffs had to be considered before the relief granted by the trial Judge could be confirmed. Apparently beyond this general submission whether a court, particularly a court of appeal, should or should not take into account the effect of a change in the law subsequent to the institution of the suit, no attempt was made by Counsel for the plaintiffs to canvass before the High Court that even if the Act could be taken notice of the rights of the parties determined on that basis.

Still on a proper construction of that Act the rights of the plaintiffs to the reliefs granted by the trial Judge remained unaffected which, as we shall point out later, is the argument pressed upon us.

There is one other matter to be noticed. It would be seen that the plaintiffs had made a claim for a declaration regarding the *zeraiti* character of the land. They had claimed mesne profits for three years before the suit which had been granted and moreover they had been granted the relief of an inquiry into mesne profits for the period subsequent to the suit up to 31. 12. 1954 even onthe footing that the estate vested in the State as and from January 1, 1955. The right of the plaintiffs to retain these reliefs depended upon the correctness of the Court's decision regarding the tenure of the land.

Counsel for the tenant-defendants canvassed before the High Court the correctness of the findings recorded by the trial Judge regarding the *zeraiti* character of the land and the further finding as regards the date from which they were in possession and cultivation of the lands and the nature and character of their possession. The learned Judges therefore examined the oral and documentary evidence bearing upon these points and arrived at the same conclusion as the learned trial Judge.

Section 4 (ee) of the Act enacts :

> "……The State Government may within three months of the service of the notice apply to the Court to be added, and shall thereupon be added, as a party thereto and shall be entitled to conduct or defend such suit or proceedings, as the case may be;……"

Pursuant to this provision notice was given to the State Government but no appearance was made on its behalf. Counsel for the State, however, appeared

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at the hearing of the appeal and prayed that a decree may be passed in favour of the State for possession of the suit-lands on the basis that the same had vested in the State under s. 4 (a) of the Act. The learned Judges, however, declined this request for the reason that the State had not been diligent in acting upon the notice served upon them as required by the Act and not entering appearance within the time limited therefor. A decree for possession in favour of the State thus having been refused, the learned Judges modified the decree of the learned trial Judges in these terms :

> "The plaintiffs shall be entitled to a decree for a declaration of their title to the effect that the lands in suit are the proprietors' private lands belonging to the plaintiffs and that they are entitled to mesne profits for the years claimed and also up to the 31st December, 1954, the plaintiffs' estate having vested in the State of Bihar on 1.1.55, and the decree for possession is set aside. The amount of mesne profits shall be ascertained in a subsequent proceedings."

It is this decree which refused them possession that is challenged by the plaintiffs in the appeal before us.

Mr. Sarjoo Prasad who appeared for the appellant, did not contest the legality or propriety of the course adopted by the learned Judges of the High Court in considering the title of the plaintiffs and their claim to the reliefs prayed for in the suit with reference to the provisions of the Act. His contention, however, was that on the very terms of the Act the plaintiffs were entitled to retain the decree for possession granted by the trial court. His argument was shortly as follows : In view of the concurrent findings that the lands were the *zeraiti*

lands of the plaintiffs, they would not vest in the State Government because of the saving in s. 6 of the Act which excepts from the operation of s. 4 such lands in the situation of those now in suit. He, however, conceded that if the exception created by s. 6 did not, for any reason, apply, the vesting in the State under s. 4 could not be resisted with the result that the plaintiffs could not have a decree for possession. It becomes, therefore, necessary to read s. 6 to ascertain its proper scope. That section runs, to quote only what is relevant for the present purpose :

> "6. (1) On and from the date of vesting, all lands used for agricultural or horticultural purposes, which were in khas possession of a proprietor or tenure-holder on the date of such vesting, including—
>
> (a) (i) proprietors' private lands let out under a lease for a term of years or under a lease from year to year, referred to in section 116 of the Bihar Tenancy Act, 1885,
>
> (ii) landlords privileged lands let out under a registered lease for a term exceeding one year or under a lease, written or oral, for a period of one year or less, referred to in section 43 of the Chota Nagpur Tenancy Act, 1908,
>
> (b) Lands used for agricultural or horticultural purposes and held in the direct possession of a temporary leases of an estate, or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock, and

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(c) lands used for agricultural or horticultural purposes forming the subject matter of a subsisting mortgage on the redemption of which the intermediary is entitled to recover khas possession thereof;

shall subject to the provisions of sections 7A & 7B, be deemed to be settled by the State with such proprietor or tenure holder, as the case may be, and such proprietor or tenure holder shall be entitled to retain possession thereof and hold them as a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner."

It will be noticed that it was only lands in the "khas possession" of the proprietor that were saved from vesting in possession in the State under s. 6. The expression 'khas possession' is defined in s. 2 (k) thus :

"'khas possession' used with reference to the possession of a proprietor or tenure holder of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock or by his own servants or by hired labour or with hired stock;"

The submission was that the plaintiffs should be deemed to have been in "khas possession" of the suit land on the date of the vesting *i. e.* January 1, 1955 by reason of the case falling within s. 6 (1) (c) which reads :

"lands used for agricultural or horticultural purposes forming the subject matter of a

subsisting mortgage on the redemption of which the intermediary is entitled to recover Khas possession thereof."

It was submitted that (1) the expression 'khas possession' had to be understood as meaning not merely actual physical possession as defined in s. 2 (k) but also cases where a person was constructively in possession, the physical possession being in some other who held the property derivatively from him or in trust for him or on his behalf or with his permission—express or implied. For this purpose learned Counsel relied on the decision of the Full Bench of the Patna High Court in *Mahanth Sukhdeo Das* v. *Kashi Prasad Tiwari* (1). Where lands in the actual physical possession of one co-sharer were held to be in the 'khas possession' of all the co-sharers within s. 2 (k)., (2) it was then urged that where a mortgagee continued in possession of property usufructuarily mortgaged to him, even after the mortgage was paid and discharged the property remained in "the khas possession" of the mortgagor because the mortgagee does not hold the property adversely to the mortgagor but his possession having started permissively, he must in law be deemed to hold it still as mortgagee. This was on the principle that the payment and discharge of a mortgage debt in the case of a usufructuary mortgage does not put an end to the mortgagor-mortgagee relationship but that the relationship would come to an end only when the mortgagee had performed his part of the obligation of returning to the mortgagor possession of the property which he held as part of the mortgage-security., (3) on this line of reasoning it was contended that a suit by the mortgagor for the recovery of possession from the mortgagee of property usufructuarily mortgaged could therefore aptly be described as "a suit for redemption" notwithstanding that the mortgage debt had been paid off. For this last proposition learned Counsel relied on certain decisions rendered on the construction

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of s. 10 of Bengal Regulation XV of 1793 (See, for instance, I. L. R. 1933 Allahabad 97)., (4) on the finding of the courts below that the defendants 1st and 2nd parties entered into possession of the property as tenants for a term during the subsistence of the *rehan* of 1897, these defendants could be in no better position and claim no higher rights than the mortgagee himself and they must be held bound by the same equities and the same estoppels as the mortgagees who let them into possession on this reasoning learned Counsel submitted that s. 6 (1) (c) of the Act covered the case since redemption in the sense of possession being redelivered to the mortgagor was not effected on January 1, 1955—the date of the vesting in the State Government.

Before proceeding further it is necessary to advert to an argument addressed to us by learned Counsel for the respondent. His submission was that on the materials on the record he could successfully challenge the finding of the High Court on the question whether the land was a *zeraiti* land of the plaintiffs. He urged that there had been a material misappreciation of the evidence adduced by the contesting defendants to establish that they had been in possession and were cultivating the suit lands even before the *rehan* bond of 1897 and that this error was so grave as to fall within the exception to the rule that this Court would not permit the questioning of concurrent findings of fact. We did not, however, permit learned Counsel to address any arguments on this part of the case in view of two matters : (1) As the contesting defendants had not filed any appeal from the judgment of the High Court granting the plaintiffs a declaration that the la d was *zeraiti* and also a decree for mesne profits up to December 31, 1954, it would follow that even if the respondents succeeded in establishing that the land was raiyat land and not *zeraiti*, it would not affect the decree passed and would only lead to this,

that they would be able just to maintain the disallowance to the plaintiffs of the relief of possession., (2) The second matter which weighed with us in not permitting arguments relating to the findings regarding the tenure of the land etc. was that we were not impressed with the legal points urged by the appellant and in the context of the facts of this case we arrived at the conclusion that for this reason the appeal should fail. We should, therefore, not be taken to have either affirmed or disagreed with the findings recorded by the learned trial judge and the High Court as regards the *zeraiti* character of the land and the claim of the defendants 1st and 2nd parties to occupancy rights in those lands.

It would be recalled that under the terms of s. 6 (1) (c) the *zeraiti* land of a proprietor would be deemed to be in his 'khas possession' if it were the subject-matter of a usufructuary mortgage subsisting on January 1, 1955 and the mortgagor had a right to recover possession of the same. The argument was that these requirements were satisfied by the appellants and that so long as the mortgagors did not obtain redelivery of possession of the property, the *rehan* of 1907 was alive and "subsisting" notwithstanding that the amount due as mortgage money was paid and discharged in 1941. Learned Counsel referred us to s.62 of the Transfer of Property Act and to the terms of Art. 148 of the 1st Schedule of the Indian Limitation Act in which a suit for possession by the mortgagor is said to be against the mortgagee indicating that during the entire period of 60 years prescribed by column 3 the mortgagor-mortgagee relationship continued. He also placed before us some decisions of the High Courts in support of the view that a mortgagee continuing in possession of mortgaged property after the payment of the mortgage money held the same on behalf of the mortgagor, and in trust for him. We do not, however, consider it necessary to discuss these

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submissions further or to record any opinion thereon since on the facts of the present case the learning involved in them is not very relevant. For it was not disputed that even a mortgagee (and *afortiori* so, a person other than the mortgagee, even though his possession originated through the possession of a mortgagee) could, by overt act and open claims, hold the property not on behalf of the mortgagor but in his own right and adversely to the mortgagor. Mr. Sarjoo Prasad however relied on certain observations in the judgment of the full Beneh of the Patna High Court in *Sukdeo Das* v. *Kashi Prasad* (1), were the learned Judges appear to consider the possession even of a trespasser who has not perfected his title by adverse possession for the time requisite under the Indian Limitation Act as the khas possession of the true owner. We consider that this equation of the right to possession with "khas possession" is not justified by principle or authority. Besides this is also inconsistent with the reasoning of the Full Bench by which constructive possession is treated as within the concept of khas possession.

The possession of the contesting defendants in the present case was in their own right and adverse to the plaintiffs, even on the case with which the appellants themselves came into Court. The plaintiffs stated in their plaint that the mortgagees had, so far as they were concerned, fulfilled their obligations and had put the mortgagors in possession of such property as they could and that it was the contesting defendants who putting forward claims to occupancy rights, resisted their entry into possession. This is, therefore, not a case of a mortgagee remaining in possession after payment of the debt without anything more but of tenants who claimed the right to retain possession of the property by asserting a title which was as much against the mortgagee as against the mortgagors. In this context the plea made by the plaintiffs relevant to the character of the possession

(1) A. I. R. 1958 Patna 630.

of the contesting defendants assumes crucial importance, for if they were admittedly trespassers then they could not be said to hold the property on behalf of the mortgagors and the entire basis of the argument as to the property being in the khas possession of the plaintiffs would disappear. Paragraph 10 of the plaint reads :

> ".....It is quite clear that the defendants 1st party or 2nd party have no kasht right in the disputed lands as against the plaintiffs, and after redemption of the *rehan,* their possession and occupation are quite wrongful".

They expanded the idea here contained in the next paragraph which we shall set out in full.:

> "On 8.6.41, in the year 1941—the plaintiffs, on payment of the entire *rehan* money, and redeemed the *rehan* property under the *rehan* bond dated 10.6.1907 and entered into possession and occupation of the *rehan* property covered by the said bond, but when the plaintiffs wanted to enter into possession and occupation of the disputed land entered in schedule No. 3, the defendants 2nd party in collusion and concert with the defendants 1st party did not allow the plaintiffs to enter into possession and occupation and there was 'fresh invasion' against the title of the plaintiffs."

It is hardly necessary to add that the defendants 1st and 2nd parties besides asserting their right to be in possession lawfully as tenants cultivating raiyati land, also asserted that they had acquired that right on account of adverse possession for more than 12 years and "on account of being settled raiyats which the maliks had all along been admitting etc....." The relevant issue framed in regard to this point was

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Issue No. 9 which read :

> "Have defendant 2nd party or 1st party acquired any right in the suit land by adverse possession ?"

and it was for the consideration of this issue that it was necessary for the Court to ascertain the date when their possession became adverse. The finding recorded by the learned trial Judge was in these terms :

> ".....The rehandars (1st and 2nd)..... had no right to create tenancies in the *zerait* land in suit and whatever tenancies might have been created by them during their possession, *ipso facto* came to an end when the mortgage was redeemed by the plaintiffs in 1941. The possession of defendants 1st party or defendant 2nd party became that of a trespasser as against the plaintiffs on the redemption of the *rehan* in 1941 ; and the suit having been instituted within 12 years from the date of redemption, the suit is not barred by limitation and the plaintiffs are entitled to recover khas possession.....The plaintiffs are entitled to treat both of them as trespassers and their possession would become adverse as against the plaintiffs from the date of redemption *i.e.*, from 1941. The suit having been instituted within 12 years from 1941, the plaintiffs right to recover khas possession of the suit land will therefore not be barred by limitation.",

and the same idea is repeated in a later passage of the judgment. This aspect of the case has not been dealt with in the judgment of the High Court apparently because the title of the contesting defendants based on adverse possession for over 12 years was not pressed before the High Court in view of its finding on the other parts of the case.

The authorities relied on by Mr. Sarjoo Prasad only go to this extent that where nothing else is known except that a mortgagee continues in possession of the property after redemption, the right of the mortgagor to sue for recovery of the property is governed by the 60 years rule based on the continuing relationship of mortgagor and mortgagee between them. These very authorities however show that if the mortgagee by some overt act renounces his character as mortgagee and sets up title in himself, to the knowledge of the mortgagor, his possession would not thereafter continue as mortgagee but as a trespasser and the suit for recovery of the property from him would be governed by Art. 144 the starting point of limitation being the date at which by the overt manifestation of intention the possession became adverse. It is *afortiori* so in cases where what the court is concerned with is not the possession of the mortgagee but of someone else, such as in this case, the tenants claiming occupancy rights. When the mortgage was redeemed they resisted the mortgagor's claim to possession and asserted their right to remain in possession as kasht tenants. It was on the basis of their possession being wrongful that a claim was made against them for mesne profits and it was on the footing of their being trespassers that they were sued and possession sought to be recovered from them. In these circumstances we consider that it is not possible for the appellants to contend that these tenants were in possession of the property on behalf of the mortgagor and in the character of their rights being derived from the mortgagor. Section 6 (1) (c) cannot, in terms, therefore apply since the mortgagor-mortgagee relationship did not subsist on January 1, 1955 even if the construction which learned Counsel for the appellant pressed upon us was accepted.

The result is, the Appeal fails and is dismissed with costs.

Appeal dismissed.