(1916) 07 AHC CK 0049

Allahabad High Court

Case No: None

Sheo Pujan Tewari and Others		APPELLANT
	Vs	
Sohbat Tewari and Others		RESPONDENT

Date of Decision: July 25, 1916

Citation: AIR 1916 All 181 : 36 Ind. Cas. 427

Hon'ble Judges: Henry Richards, C.J; Rafique, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This appeal arises out of a suit brought by the plaintiffs for a declaration of their title to certain plots of land and for maintenance of alleged possession. According to the allegations of the plaintiffs in the plaint, the plots in dispute formed a portion of an occupancy holding which the plaintiffs alleged belonged to them. They expressly mentioned that the defendants bad no concern with the same, The Court of first instance decided in favour of the plaintiffs. Reading the, judgment of the learned Munsif it would appear that he dealt with the prospective altogether of the question of possession. The defendants appealed and their first and clearly a very prominent ground of appeal was that the defendants had not been in possession within twelve years of the institution of the suit. The lower Appellate Court held that the plaintiffs had not been in possession within twelve years. It is conceded here that if the plaintiffs were not in possession within twelve years of the institution of the suit, they were not entitled to the relief they sought. A learned Judge of this Court refused to accept the finding of the lower Appellate Court as to the possession of the plaintiffs, and allowed the appeal. The defendants come herein Letters Patent Appeal and contend that the finding of fact arrived at by the lower Appellate Court was binding on the learned Judge of this Court and ought to have been accepted by him. The learned Judge of this-Court has made some remarks as to the duties of an Appellate Court, with most of which we agree. He thinks that the judgment of the Trial Court ought to receive the greatest consideration at the hands of the Appellate

Court particularly where it deals with pure questions, of fact and the weight to be attached to oral evidence. Nevertheless the Appellate Court, including this High Court, cannot cast aside the duty thrown upon it by the Legislature of over, ruling the Trial Court if it really considers that that judgment should be overruled. In Coghlan v. Cumbkerland (1898) 1 Ch.D. 704 : 67 L.J.Ch. 402 L.T. 540, Lindley, M.R, delivering judgment in the Court of Appeal, says as follows: "The case was not tried with a Jury, and the appeal from the Judge is not governed by the rules applicable to new trials after a trial and verdict by a Jury. Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to re-hear the case, and the Court must re-consider the materials before the Judge with such other materials as it may have decided to admit. The Court must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it, if on full consideration the Court comes to the conclusion that the judgment is wrong. When as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the Judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions; and when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may shew whether a statement is credible or not; and these circumstances may warrant the Court in differing from the Judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen." In India the Trial Court has not always the advantage of trying a case straight off. It frequently happens that from various circumstances over which the Court has no control, the case has to be taken up piecemeal often with long intervals of time. Furthermore, the Court unfortunately is obliged to sacrifice a large part of its opportunity of observing the demeanour of the witnesses, in labouriously recording the evidence. It thus happens, far too often, that the Trial Court in India has to give its judgment from a perusal of its own record long after the witnesses have been heard and where it has had to decide and consider numerous other cases in the interval. Sometimes, the Court that pronounces the first judgment has heard only part of the evidence and sometimes none at all. Il would, therefore, seem that the remarks of their Lordships in the case to which we have referred would have particular application to decisions of Trial Courts in India. In the present case the learned District Judge found that ever since the year 1884, the plots in dispute were recorded as belonging to the defendants and not as belonging to the plaintiffs. Under these circumstances he considered, and we think rightly considered, that the onus lay on the plaintiffs of proving possession within limitation.

2. Possession, no doubt, is a legal expression and can be proved in more ways than one. A man can be in possession by cultivating himself or through his tenants. The learned Judge, having considered upon whom the onus lay, proceeded to consider the evidence adduced by the plaintiffs on the one side and by the defendants on the other. He came to the conclusion that the plaintiffs had not proved that they were in possession within twelve years. We think that this was a legitimate and vital issue in the case. We have already pointed out that it was the very first ground of appeal. We think that this Court was bound to accept the finding. We also consider that much more prominence should have been given to this issue by the Munsif than appears to have been done. We allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower Appellate Court with costs of both hearings.