

(1880) 02 CAL CK 0002

Calcutta High Court

Case No: None

Juggobundhu
Mukerjee and Others

APPELLANT

Vs

Ramchunder Bysack

RESPONDENT

Date of Decision: Feb. 2, 1880

Citation: (1880) ILR (Cal) 584

Hon'ble Judges: Richard Garth, J; Pontifex, J; Morris, J; McDonell, J; Jackson, J

Bench: Full Bench

Judgement

Richard Garth, C.J.

If we were satisfied that, in the Mundul's case (19 W.R. 101) their Lordships of the Privy Council intended to decide the question which is now referred to us, it would, of course, have been unnecessary to consider the matter further. But, upon a careful perusal of their Lordships' judgment, and on referring to the facts as they appear in the copy of the printed book, we much doubt whether the point was really raised in that case, or whether their Lordships intended to express any opinion upon it.

2. We have, therefore, now to decide the matter without reference to their Lordships' judgment; and having considered the sections of the Code which bear upon it, and the somewhat contradictory decisions to which we have been referred during the argument, we have come to the conclusion, that the question of law referred to us should be answered in the affirmative.

3. Sections 223 and 224 of the Code point out the mode of executing decrees in suits for Immovable property; Section 223 applies, where the land is in the actual possession of the defendant; Section 224, where it is in the occupation of ryots.

4. In the one case, the delivery of the land is to be made by placing the plaintiff in direct possession. In the other, the delivery is effected by the officer of the Court by going through a certain process prescribed by Section 224, and proclaiming to the

occupants of the property that the plaintiff has recovered it from the defendant. This is the only way in which the decree of the Court, awarding possession to the plaintiff, can be enforced; and as, in contemplation of law, both parties must be considered as being present at the time when the delivery is made, we consider that, as against the defendant, the delivery thus given must be deemed equivalent to actual possession.

5. As against third parties, of course, this symbolical possession (as it is called) would be of no avail; because they are no parties to the proceeding.

6. But if the defendant should, after this, again dispossess the plaintiff by receiving the rents and profits, we think that the plaintiff would have twelve years from such dispossession to bring another suit.

7. One very conclusive test, as it seems to us, that the delivery thus effected u/s 224 does really, in the eye of the law, place the plaintiff in possession as against the defendant, consists in this; that if mesne profits are awarded to the plaintiff, he is only entitled to them up to the time when delivery is given. This can only, of course, be explained upon the ground, that, at that time, the defendant's possession is considered at an end, and the transfer to the plaintiff becomes complete.

8. We think, therefore, that the judgment of the lower Appellate Court, upon the question of limitation, must be reversed, and that the case should be remanded to that Court to be tried upon its merits.

9. The costs in this Court will abide the result.