

(1917) 11 CAL CK 0001**Calcutta High Court****Case No:** None

Raja Jagadish Chandra Deo
Dhabel Deb

APPELLANT**Vs**

Sridam Mahata and Durga
Prasad Pramanik and Others

RESPONDENT**Date of Decision:** Nov. 27, 1917**Acts Referred:**

- Transfer of Property Act, 1882 - Section 26

Citation: 44 Ind. Cas. 26**Hon'ble Judges:** Smither, J; Charles Chitty, J**Bench:** Division Bench

Judgement

1. In this case the plaintiff Sridam Mahata sued to recover possession of 137 bighas odd in Mouza Dakhina, on the ground that he had a mourasi mokurari jote mondali right under the defendant No. 1. The plaintiff pleaded dispossession on 29th July 1898 and he filed his suit on 22nd June 1910, just within 12 years. The point of limitation was taken both in Courts below and in this Court but has not been seriously pressed before us, as it appears that the suit of the plaintiff which was first filed in the 4th Munsif's Court was presented by him in that Court with due diligence and was only returned to be presented before the higher Court when it was found that the value of the land exceeded the amount of the Munsif's jurisdiction. The point of law relied upon by the defendant No. 1, who is the appellant in this Court, is that the title of the plaintiff was extinguished by the sale by the landlord, defendant No. 1, in pursuance of the decree in the suit of 1894 which the predecessor of the defendant No. 1, Ishwar Chandra Deb, brought against Gangadhar Mahata, the defendant No. 4, one of the heirs of Pahal Singh--the original owner of the property. It was argued that the defendant I had the right to ignore the present plaintiff as he was not registered as the tenant of this property. It is not disputed that the land in question originally belonged to Pahal Singh--the father-in-law of the present

plaintiff--who by his Will dated 13th December 1880 left it to the plaintiff. That Will was duly proved in 1883 after the death of Pahal Singh, and it appears that the plaintiff was in possession from 1883 to 1887 and again from the date of his decree at the end of 1894 until he was dispossessed in 1898. The Subordinate Judge in the Trial Court has found that the suit brought by Iswar Chandra against Gangadhar in 1894 was collusive and in fraud of the plaintiff. The plaintiff had during the pendency of that suit been suing the heirs of Pahal Singh and also Iswar Chandra, That suit was decreed against the heirs of Pahal Singh and the plaintiff's right to this property was duly decreed. The suit was dismissed formally against Iswar Chandra, because he was not a party to the dispossession of the plaintiff at that time. But the decree was passed in his presence and it is clear that he knew perfectly well that the plaintiff Sridam Mahata was the transferee of the property and that the defendant No. 4 against whom he brought the suit for rent had no right whatever to it. Reliance was placed by the defendant on the Full Bench ruling in the case of Sham Chand Koondoo v. Brojonath Pal Choudhry 21 W.R. 94 : 12 B. L.R. 484. In that case it was held that it was intended that the zemindar should be at liberty to treat as the holder of the tenure, and as the person whom he might sue for the arrears of rent, the person who was registered in his books as the owner, unless any one could show that there had been a transfer, and that there was sufficient cause for its non-registration. That exception is very important in this case, because undoubtedly here there was a transfer in favour of the present plaintiff and equally without doubt the defendant No. 1 knew all about it, having been a party to that suit. Instead of doing as he ought to have done u/s 26 of the Transfer of Property Act, namely, admitting the plaintiff's transfer to registry, he brought the fraudulent and collusive suit against defendant No. 4, carried that decree to execution and brought about what was an equally fraudulent and improper sale of the property with the express view of ousting the present plaintiff. It appears to us that that creates an exception in this case from the general rule and that it would be impossible for the Court to give relief on the bare statement of the law to a man who has thus behaved.

2. Another point was intimated by the learned Pleader for the appellant which affects the respondent more materially than the defendant-appellant, and that is that the decree in the case is incapable of execution inasmuch as, while the Courts have declared that the plaintiff is entitled to khas possession of the 137 bighas odd in Mouza Dakhina, they have not specified to which 13 bighas they refer. We think, for the further security of the plaintiff-respondent, that the learned District Judge should be asked to specify by boundaries, after such enquiry as he may find necessary, the 137 bighas 7 cottahs 9 chataks in respect of which the decree was passed. On his reporting to this Court, the decree in this appeal will be drawn up. The learned District Judge should be asked to correct the decree in this particular within a month from the receipt of the record by him.

3. The plaintiff-respondent must have his costs of this appeal from the defendant-appellant.

4. Let the record be sent down without delay.