

Shiekh Rasak Ali alias Rased Ali Mandal and Others Vs Sheikh Hazi Abdul Rasid and Others

Court: Calcutta High Court

Date of Decision: June 4, 1925

Citation: 91 Ind. Cas. 610

Hon'ble Judges: Cuming, J; Chakravarti, J

Bench: Division Bench

Judgement

Chakravarti, J.

This is an appeal by the defendants and arises out of a suit brought by the plaintiffs for declaration of their 14-annas share

in certain Immovable properties and also for partition, the plaintiffs' case shortly stated was this: the properties in suit belonged originally to two

brothers Moshim and Basiruddin each had an 8-annas share in the properties. Moshim died leaving a widow Atta Bibi, a son and a daughter. It

appears that in 1881 Atta Bibi for herself and as guardian of her two minor children sold a 6-annas share of Moshim's property to her brother-in-

law Basiruddin. Basiruddin in his turn sold this 6-annas share purchased by him together with the 8-annas share which belonged to himself in his

own right aggregating to 14-annas share in the properties in suit to one Golam Nasraf, that subsequently Pairannessa Bibi widow of Basiruddin

executed in 1892 a deed of release in favour of Golam Nasraf renouncing her interest in the properties sold by her husband. Now the plaintiffs'

case is that they were in possession, under the purchase of their predecessor Golam Nasraf, of the property along with the defendants who were

the son, widow and the daughter of Moshim jointly to the extent of their 14-annas share. The defendants resisted the claim of the plaintiffs on the

ground that the suit so far as the properties Nos. 2 and 3 were concerned was not maintainable, because there were other co-sharers in whose

absence a decree for partition was not maintainable. As regards the other properties the defence was that the plaintiffs' predecessor Golam Nasraf

acquired no title to the 6-annas share which was sold by Atta Bibi in the year 1881, because it was pointed out by the defendant that Atta Bibi

was not competent guardian under the Muhammadan Law to transfer the interest of her minor children in Immovable properties inherited by them

from their father. The defendants further denied the possession of the plaintiffs, more specially they denied their possession in certain structures

known as Dalij and Gohal which stood upon a portion of the properties in suit.

2. The Court of first instance found the plaintiffs' title as claimed and gave a decree for partition of the joint properties with the exception of plots

Nos. 2 and 3.

3. On appeal by the defendants to the District Court the questions which were raised on behalf of the defendants were that the plaintiffs acquired

no title by the conveyance executed by Atta Bibi and that the plaintiffs had not acquired any title by adverse possession to the properties in suit.

Now, the learned District Judge has found that although the conveyance by Atta Bibi was invalid under the Muhammadan Law the plaintiffs were

in possession of the 14-annas share in the properties from the time of their predecessor for all those years and had acquired a good title by adverse

possession. The learned District Judge held, to quote his own words, "I am inclined to hold that in the present case there was adequacy, continuity

and exclusiveness in the possession of the plaintiffs. As stated before, the plaintiffs had possession of the share claimed in the property, some, times

khas and some times through tenants continuously for a very long period of time" The learned Judge in that view affirmed the decree of the Trial

Court.

4. In this second appeal it was contended by the learned Vakil for the appellants that so far as the Dalij and Gohal are concerned no adverse

possession was proved, because it was admitted that the defendants were in exclusive possession of these structures. Now it appears to me that

the passage which I have quoted from the judgment of the learned Judge concludes the contention of the appellant. The plaintiffs were in

possession of their 14-annas share in the properties. If some of the co-sharers which the defendants admittedly were to the extent of 2-annas were

allowed to raise structures on a piece of joint land then such exclusive use could not deprive the plaintiffs of a share in the properties when a

general partition was effected. It was pointed out by the learned Advocate who appears for the respondents that these structures were raised only

about 8 or 9 years before this suit was commenced.

5. The entry of the plaintiffs under their purchase was effected about 30 years before the erection of these structures, and as I have already pointed

out the learned District Judge has found the title-in-favour of the plaintiffs by adverse possession.

6. Secondly it was contended by the learned Vakil for the appellant that as regards some of the properties there was a want of proper properties.

But we do not find that any such question was raised in the lower Appellate Court.

7. Then it was lastly contended that the plaintiffs were residents of a different village and the defendants were in possession of what was their

ancestral bari in the land. Well that is a matter which the Commissioner in partition will take note of and it is quite possible that the plaintiffs will

have no objection to the defendants" getting this site of the house if they get an equivalent land elsewhere. However that is a matter for the Court

when it decides the question of equitable partition between the parties.

8. It seems, therefore, there is no error of law in the judgment of the learned District Judge with which we can interfere.

9. This appeal, therefore, fails and is dismissed with costs.

Gaming, J.

10. I agree.