

68 Ind. Cas. 1003

Calcutta High Court

Case No: None

Ujir Ali Sirdar

APPELLANT

Vs

Shadhai Behara and
Others

RESPONDENT

Date of Decision: July 15, 1920

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 18A

Citation: 68 Ind. Cas. 1003

Hon'ble Judges: Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

Bench: Division Bench

Judgement

Mookerjee, Actg, C.J.

This is an appeal by the plaintiff in a suit for ejectment of the defendants from what, awarding to him, originally constituted a service-tenure.

2. The suit was instituted in the first instance against five defendants, the representatives-in-interest of the alleged service-holder, and was decreed in the Court of first instance. Upon appeal to the District Judge, that decree was set aside on the ground that one Macleod, a transferee from the other defendants, should have been joined as a party defendant to the suit. The validity of the order of remand so made by the District Judge was considered by this Court, but the order was affirmed. Thereupon the order made was carried out and Macleod was added as a defendant on the 6th September 1916. The Subordinate Judge has, after re-trial, held that the claim is unfounded, and that view has been accepted by the District Judge.

3. On appeal to this Court, the decree of the District Judge has been assailed on three grounds; namely, first, that in respect of the parcels of land claimed by Macleod, the District Judge has erroneously held that the suit was barred by limitation; secondly, that in respect of the other parcels of land, the District Judge has misconstrued an admission alleged to have been made by the plaintiff in his deposition; and, thirdly, that in respect of

these parcels of land, the District Judge has erroneously relied upon statements in two deeds of gift, which were inadmissible u/s 18A of the Bengal Tenancy Act.

4. As regards the first contention, we are clearly of opinion that the case for the appellant cannot be sustained. It has been found that Macleod purchased the holding now in his occupation by two deeds in 1903. The conveyances purported to be in respect of permanent tenures held at rents fixed in perpetuity. The documents were registered and the landlord's fees were paid into the Registration Office. The District Judge, in concurrence with the Subordinate Judge has found that the landlord became aware of the transfer and also knew that Macleod openly held the lands, asserting his right as tenant by virtue of his purchase. The present suit was instituted on the 13th, May 1910, but as Macleod was not added as a defendant till the 6th September 1916, in so far as he is concerned, we must take it for the purposes of limitation that the suit as against him was filed on the 6th September 1916. Consequently, at the date of the institution of this suit, Macleod had already been in possession for more than 12 years, to the knowledge of the landlord, in assertion of his title as transferee of the holding conveyed to him, It has been argued, however, on behalf of the appellant that time did not begin to run as against the plaintiff till he had terminated the alleged service-tenure by a notice upon the service holder. We are of opinion that there is no foundation for this contention: In the first place, the Subordinate Judge found that the plaintiff had failed to adduce evidence to prove his allegation as to the existence of the service-tenure. In the second place, there is no finding and, indeed, in view of the evidence to which we have just referred, there could not be any finding that after the transfer by the original defendants to Macleod in 1903, they come have rendered any service to the plaintiff. It is, consequently, plain that Macleod has by prescription acquired the status of a tenant under the plaintiff, on the well-recognised principle that admitted interest in property can be acquired by adverse possession. *Ishan Chandra Mitter v. Raja Ramranjan* 2 C. L. J. 125., *Raktoo Singh v. Sudhram Ahir* 8 C. L. J. 557. *Icharan Singh v. Nilmoney Balidar* 35 C. 470 : 7 C. L. J. 499 : 12 C. W. N. 636. ; *Prohabati Dasi v. Taibaturnessa* 20 Ind. Cas. 664 : 19 C. L. J. 62 : 17 C. W. N. 1088.; *Panchkari Chattapadhya v. Maharaj Bahadur Singh* 28 Ind. Cas. 708 : 19 C. W. N. 136.; *Birendra Kisore v. Laksmi* 30 Ind. Cas. 896 : 22 C. L. J. 129.; *Muthurahu Thevan v. Robert ordon Orr* 10 Ind. Cas. 575 : 35 M. 618 : 10 M. L. T. 12 : 21 M. L. J. 615. We must consequently hold that the suit has been rightly dismissed as against Macleod.

5. As regards the remainder of the lands, the case for the defence was that they formed an occupancy holding bearing an annual rental of Rs. 10. The District Judge has held this allegation proved by the evidence which includes, first, an admission alleged to have been made by the plaintiff in his deposition and, secondly, recitals in two deeds of gift executed on the 10th April 1894 and 22nd August 1894 by the holders of the tenancy at that time. The second and third grounds urged by the appellant raise the question of what has been tailed the construction of the admission and the admissibility of the recitals.

6. As regards the admission, we are of opinion that the appellant cannot raise the question in second appeal. It was pointed out by Sir Richard Couth, C. J. in the case of *Nowbut Singh v. Chutter Dharee Singh* 19 W. Rule 222. that the misconstruction of a document which is the foundation of a suit is no doubt a question of law, but the misconstruction of a document which is alleged to contain an admission, that is to say, a misappreciation of the meaning and effect of an admission is not a question of law which can be raised in second appeal. The same view has been taken in the cases of *Ananda Chandra Sen v. Parbasi Nath Sen* 4 C. L. J. 198. *Braja Mohan Mandal v. Thakur Das Nath* 4 Ind. Cas. 732 : 10 C. L. J. 593; *Butlul Karim v. Satish Chandra Giri Mahant* 10 Ind. Cas. 325 : 13 C. L. J. 418 : 15 C. W. N. 752.; *Rajah Makund Deb v. Gopi Nath Sahu* 25 Ind. Cas. 286 : 21 C. L. J. 45.

7. As regards the recitals in the deeds of gift we are of opinion that they are not admissible u/s 18A of the Bengal Tenancy Act which provides that: "Nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, amount or fixity of rent, area, transferability or any incident of any tenure or holding referred to in such instrument," The respondent has contended that even if the recitals are excluded, there is abundant evidence to support the conclusion of the District Judge, But it is not possible for us in second appeal to say whether, if the recitals in the deeds of gift are excluded, as they must be, there is sufficient evidence left to justify the decree, That is a matter which must be considered by the lower Appellate Court. *Womes Chunder Chatterjee v. Chundee Churn Roy Chowdhry* 7 C. 293 : 3 Ind. Dec. (N. S.) 737.

8. The result is, that although we affirm the decree of dismissal as against Macleod we set aside the decree of the Court below in respect of all the lands not purchased by him, and remand the case to the District Judge in order that he may re-consider the question of the lands which are alleged to form an occupancy holding bearing an annual rental of Rs. 10. The matter will be re-considered irrespective of the recitals in the two deeds of gift. In so far as Macleod is concerned, the appeal stands dismissed with costs; in so far as the other respondents are concerned, costs will abide the result.

Fletcher, J.

9. I agree.