
AIR 1926 Cal 589 : 92 Ind. Cas. 908

Calcutta High Court

Case No: None

Siteswar Roy and
Another

APPELLANT

Vs

Tepua Barman and
Others

RESPONDENT

Date of Decision: July 9, 1925

Citation: AIR 1926 Cal 589 : 92 Ind. Cas. 908

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 right to a share in the properties in suit and for possession after partition by metes and bounds. The properties in suit-are certain jamas and the plaintiffs claimed a 3/4th share in those properties. The defence of the defendants was that they were the owners of the jotes and were in exclusive possession thereof for a very long time without any connection whatsoever with the plaintiffs.

2. The facts shortly stated are these: It appears that one Janaki died leaving three sons Dhir Nath, Asinath and Kalinath. Dhirnath had four sons, namely, Kachu, Tepu, Fulchan and Fedhu. The plaintiffs are the sons of Kachu and the other two-sons of Dhirnath, namely, Tepu and Fulchan. The defendants are the sons of Fedhu who according to them was adopted by Asinath.

3. The plaintiffs case as presented in the first Court was that they were in possession of their share in the jotes which, were their ancestral properties by receipt of paddy from their adhiars and were, therefore, in joint possession of their share with the defendants. The plaintiffs alleged that they had been dispossessed after a criminal case from all lands except those mentioned in schedule "Icha" to the plaint.

4. The learned Munsif found that the plaintiffs' story that they were in joint possession with the defendants was not established. He found that Tepu, to use his own words, lived in a place called Tepuigari, four or five miles away from the suit land and he migrated there several decades ago. His sons and daughters were all born there, Plaintiffs' witness Mantra Gobinda, a man, of Bhandardaha, where the suit land is situated says that he has not seen Tepu for many years--20 or 30 years. Srikanta and Dhepra also live at Kanfata, a place within the jurisdiction of the Cooch Behar State. Fulchan also lives at a distant place. In effect the learned Munsif found that some of the plaintiffs and the ancestors of the others had left the village more than 30 years before the suit and set up their own respective cultivation at those distant places, and that the story of the plaintiffs that they were in receipt of the bhag paddy was unworthy of credit. He further pointed out that neither Tepu, nor Fulchan, nor the sons of Kachu who are the plaintiffs in this case had come to depose in this suit. He further pointed out that the story of their joint possession with the defendants was not supported by the oath of any of the plaintiffs in the case. On these findings the learned Munsif dismissed the plaintiffs' suit.

5. On appeal by the plaintiffs the learned Officiating Subordinate Judge has reversed the decree of the Court of first instance and declared the plaintiffs' title and remanded the case for effecting partition of the plaintiffs' share. The learned Subordinate Judge has not dealt with any of the categorical findings arrived at by the learned Munsif which I have stated above. From the mere fact that the properties were ancestral properties of the defendants and the plaintiffs at a remote date he comes to the conclusion that the defendants not having asserted a hostile title to the knowledge of the plaintiffs the lands in suit must be inferred to have been in the custody, to use his own words, "of their co-owners."

6. The learned Vakil who appears for the defendants-appellants contends that the theory of the plaintiffs' possession through the defendants should not have been relied upon by the lower Appellate Court when the plaintiffs' case was that they were in actual possession of their own lands by settling the lands on their own behalf with the adhiars. The learned Subordinate Judge has not taken any notice of the findings of the learned Munsif that the plaintiffs had cut off all connections with these properties for, to use the words of the Munsif, "several decades." It is quite apparent that the learned Subordinate Judge was not prepared to dissent from the findings of fact arrived at by the learned Munsif. I think the contention of the learned Vakil for the appellants ought to be given effect to. When the plaintiffs were found to have no connection with these properties for over 30 years, and their positive case that they were in actual possession of the lands for themselves failed. I do not think that there was any room for the presumption which the learned Subordinate Judge has raised in favour of the plaintiffs, namely, that the defendants were in possession on behalf of the plaintiffs. I think, therefore, when the plaintiffs suing in ejectment made a positive case that they were in possession of the property within 12 years and failed to establish that case the suit should have been dismissed.

7. We think, therefore, this appeal should be allowed and the judgment of the first Court restored with costs both of this appeal and of the appeal before the Subordinate Judge.

Cuming, J.

8. I agree.