Raja Baradakant Roy Bahadur Vs Prankrishna Paroi and Others

Special Appeal No. 1937 of 1868

Court: Calcutta High Court

Date of Decision: July 20, 1869

Judgement

Loch, J.
The plaintiff sues to recover possession of a jalkar in the River Bhairab, of which he alleges he obtained a lease from Ganga

Prasad Paroi. The jalkar is said to be situated in the lakhiraj lands of Mowla Baksh; it was let to, and held for many years by, Sarup Chandra

Paroi, whose right and title were sold in execution of a decree, and purchased by Ganga Prasad, The plaintiff, after being in possession for some

time, was evicted on 15th Chaitra 1259 by the defendants, who prevented his catching fish. The defendants claim to hold the jalkar from Raja

Baradakant Roy, and deny the plaintiff"s right to the jalkar, as also the charge of having ousted him.

2. Both Mowla Baksh and Raja Baradakant Roy appeared in Court, and were made parties to the suit; and the conclusion come to by both the

lower Courts, on the evidence of witnesses produced by the plaintiff, was that though the fisheries of the Bhairab River might originally have been

settled with the Raja, as shown by papers from the Collector"s office, yet he had been out of possession of the jalkar in dispute for more than

twelve years, and that possession was with the plaintiff and his lessors during that period; and though the Raja is now in possession, by some

means or other, he was not entitled to retain possession as against the plaintiff.

3. In special appeal, it was urged that the plaintiff had failed to make out any title either in himself or his lessors; that as the Raja had now

recovered possession, the fact of plaintiff"s possession for more than twelve years gave him no title to the property; that adverse possession for

more than twelve years, while it barred the remedy, did not extinguish the right, and could not confer title upon the plaintiff; and therefore the lower

Courts were wrong, on mere proof of possession for upwards of twelve years, in giving him a decree as if he had proved a title.

4. The documentary evidence adduced by plaintiff cannot be used against the defendant, as he was no party to the suit of 1835, in which Sarup

Chandra Paroi obtained a decree for this jalkar; but the fact of plaintiff''s lessors'' possession, and of the Raja''s dispossession for more than twelve

years, has been satisfactorily proved in the opinion of the lower Courts by the evidence of witnesses.

5. It is said that twelve years'' adverse possession merely bars the remedy, but does not affect the right, and does not confer title on the opposite

party. We have very high authority in support of the contrary opinion. In the case of Shib Chandra Das v. Sib Kishen Banerjee 1 Boul. Rep. 76,

Chief Justice Peel remarks:---""In my opinion the weight of authority is in favour of the position, that though a law in terms limits the suit only as to

immoveable property, it in effect gives the possessor, who is protected against outstanding claims founded on original rights, the property as against

those persons as well as the possession. It is undoubtedly the law in all the Courts in the Mofussil, and has long been so, that after twelve years''

adverse possession, no exception applying to the case, and when all claimants are barred in those Courts as to suit, the occupant has title and may

confer title."" And again he remarks:-- ""At no time in our law could a tortuous entry be made the foundation of a remitter, or be available to revive a

right which once existed, but against which effluxion of time had set up a bar in favour of long possession."" And Colvile, J., in the same case:-- ""But

the subject of the suit is immoveable property, and the necessary effect of the law, which takes away the remedy in that locality, is to give a title in

that locality to the adverse possessor."" But we have the authority of the highest Court in support of the same doctrine. In the case of Gunga Gobind

Mundul v. The Collector of the 24 Pergunnas 11 M.I.A. 345, their Lordships of the Privy Council remark;--""It is of the utmost consequence in

India that the security which long possession affords should not be weakened. Disputes are constantly arising about boundaries and about the

identity of lands: contiguous owners are apt to charge one another with encroachments. If twelve years'' peaceable and uninterrupted possession of

lands alleged to have been enjoyed by encroachment on the adjoining lands can be proved, a purchaser may take that title in safety; but if the party

out of possession could set up a sixty years'' law of limitation, merely by making common cause with a Collector, who could enjoy security against

interruption? The true answer to such a contrivance is, the legal right of the Government is to its rent; the lands are owned by others; as between

private owners contesting inter se the title to lands, the law has established a limitation of twelve years. After that time it declares not simply that the

remedy is barred, but that the title is extinct in favour of the possessor."" It was remarked by the pleader for the special appellant that this

expression of opinion of their Lordships was an obiter. I am unable to view it in this light. The question of limitation was before their Lordships in

that suit, and one of the parties appears to have endeavoured to evade the usual law of limitation by inducing the Collector to come forward on the

part of Government, and was thus able to plead sixty years in answer to the plea of limitation set up by the opposite party.

6. The judgment of the Court below appears to me to be correct. I therefore dismiss the special appeal with costs.

Mitter, J.

I concur.