

(1919) 01 CAL CK 0007

Calcutta High Court

Case No: None

Tara Chand Roy and Others

APPELLANT

Vs

The Secretary of State for India
in Council and Others

RESPONDENT

Date of Decision: Jan. 22, 1919

Citation: AIR 1919 Cal 240(2) : 50 Ind. Cas. 45

Hon'ble Judges: Panton, J; Greaves, J

Bench: Division Bench

Judgement

1. These are appeals by the plaintiffs in two suits, both appeals being governed by one judgment.

2. The plaintiffs sued for khas possession of two plots of land. It appears that these plots of land had been re-formed by the action of a certain river which lies to the north of the two plots, and it is not disputed, having regard to the findings of both Courts, that these lands now in dispute are accretions to the plaintiff's holding. The plaintiffs are tenants of the Government khas mahal lands.

3. The only question that arises in appeal is whether the plaintiffs are debarred by reason of limitation from succeeding in the suit. As already stated both Courts have found title in their favour, and it is urged on their behalf that the acts of possession adverse to them by the defendants with regard to these lands are not sufficient to have given a title by adverse possession to the Government as against them, It appears that the Government on the 12th January 1901 took possession of the chur. Subsequently in 1902 they let out the chur in ijara to one Asutosh Chakravarty. The appellants before us contend that for the purposes of adverse. Possession title of the Government only runs as from 1902 when they let out the lands in question, and that inasmuch as the suit was commenced on the 16th April 1913 it is not barred by limitation. On behalf of the respondents it is urged, and both Courts have so found, that adverse possession began to run in favour of the Government as from the 12th January 1901 and that consequently the plaintiffs' suit is barred by limitation.

4. From the judgment of the Munsif which is dated 7th December 1914, it appears that he states: "Both the suits, however, appear to be barred by the general law of limitation. It is an indubitable fact that the Government took possession of the chur on the 12th January 1901 (see Exhibit L-1). Evidence that Government took possession on that date has also been given." If his judgment stopped there then there would undoubtedly be, so far as he was concerned, a finding of fact adverse to the appellants upon the evidence with regard to the adverse possession of Government. But lower down in his judgment he states: "it has been contended that Government took only symbolical possession" in January 1901 and only actually possessed the chur when it was let out to Asutosh Chakravarty in 1902, and the plaintiffs" Pleader argues that limitation should run from the date of actual possession. No authority for such a contention has been shown. Government took the only form of possession of which the lands were capable in January 1901." Thus the judgment leaves the question in some doubt as to whether the Munsif relied for his finding only upon the setting up of a bamboo by the Government on the 12th January 1901 or upon other acts of possession from that date up to April 1902. We have been referred to some evidence on the record given by witness No. 1 on behalf of the Secretary of State that the Government took possession when the island was formed and that paddy was grown on the island when it was first formed. But for the reasons already stated, it is not quite clear whether the Munsif's finding was based simply upon the bamboo or upon other evidence on the record. The Subordinate Judge states that he agrees with the Munsif upon the question of limitation. He states: Government took possession on 12th January 1901 by posting a bamboo on the disputed land accompanied by beat of drum;" and later on in the judgment he states. "The posting of the bamboo by Government is a clear and visible assertion of title and ownership."

5. We think, therefore, that it is clear from the judgment of the Subordinate Judge that his finding was simply directed to the question of the placing of the bamboo and that he was of opinion that this was sufficient to constitute in the Government title by adverse possession as from the date when the bamboo was planted. We are not prepared to assent to that contention, and we think that if the only act of possession exercised by the Government between the 12th January 1901 and the 17th April 1901 was the planting of a bamboo on the land then that was not by itself sufficient to enable them to acquire as against the plaintiffs, in whom the title to the land has been found, a title by adverse possession. In *Baroda Prosad Roy Chowdhury v. Annoda Mohan Roy Ind. Cas. 359 : 13 C.L.J. 80* a statement of the law on the subject is to be found at page 33, Page of 13 C.L.J.--[Ed.] namely, that adverse possession to be effective must be actual, visible, exclusive, hostile and continuous for the statutory period: and we do not think that the planting of the bamboo alone amounts to such possession as is defined at page 33 13 C.L.J.--[Ed.] of that judgment.

6. The result is that we remand the case to the Subordinate Judge of Khulna in order that he may arrive at a finding upon the evidence on the record as to whether the Government exercised with regard to the disputed land any acts of adverse possession other than the planting of the bamboo sufficient to give them a title by adverse possession prior to the 17th April 1901. The learned Vakil on behalf of the tenants under the Government, defendants Nos. 3 and 4, urges that he is entitled to a finding with regard to the 11th issue, and so the learned Subordinate Judge will also arrive at a finding on the 11th issue which was not dealt with in view of the finding on the question of limitation. In the event of the Subordinate Judge finding that the Government have exercised acts of possession such as I have stated prior to the 17th April 1901, the appeals will stand dismissed, but in the event of his finding that Government have exercised no acts of adverse possession apart from the setting up of the bamboo prior to the 17th April 1901, in that case the appeals will succeed, subject of course to the decision upon the 11th issue.

7. The cases are accordingly remanded to the lower Appellate Court to be dealt with and disposed of in accordance with the directions given above. The costs of the remand and the costs of this hearing will abide the result of the remand to the Subordinate Judge.