

(1868) 12 CAL CK 0004

Calcutta High Court

Case No: Special Appeal No. 1808 of 1868

Thakur Mahabir Prasad

APPELLANT

Vs

Shiu Dayalpuri and Another

RESPONDENT

Date of Decision: Dec. 18, 1868

Judgement

L.S. Jackson, J.

The plaintiff in this case alleged that he held a mokurruri tenure of the lands in dispute under the party from whom the defendant, Shin Charan had purchased, and under the defendant, Shiu Dayal; and that having brought a suit in the Revenue Court against the defendants for damages on account of an alleged injury to his crops committed by them, he had been found by the Revenue Court not to be in possession; and that, consequently, by reason of that decision, and on the date of the decision, he had been dispossessed; he, therefore, asked the Court to adjudicate upon his mokurruri title, and replace him in possession. The lower Appellate Court seems to me to have distinctly found that the alleged mokurruri title of the plaintiff was not proved, but having allowed the plaintiff an opportunity of adducing further evidence on the question of possession, and the plaintiff having given such evidence, the Judge considered that possession for more than 12 years had been made out on the plaintiff's part; and, therefore, on the ground simply of his possession, affirmed the decree which the plaintiff had obtained. The contention before us in special appeal is that, under the circumstances of this case, mere proof of possession is not sufficient to entitle the plaintiff to a verdict.

2. For the respondent it is urged that, in the first place, there was evidence, and conclusive evidence in favour of the plaintiff as to his mokurruri right, and that no objection to the finding of the Court below on that point has been tendered; but also it is urged that proof of possession was sufficient.

3. As to the so-called conclusive evidence regarding the plaintiff's mokurruri it appears to me that it was not such evidence. (His Lordship here commented upon the evidence in detail).

4. The question remains whether the Judge was right in holding that the plaintiff was entitled to a judgment on merely proving his possession, The respondent's pleader cites a decision of this Bench in the case of Viswanath v. Brajamohan Chuckerbutty [1 B.L.R. (Short Notes), 1].

5. That case appears to me clearly distinguishable from the present. In that case, the plaintiff held the lands in dispute as lakherajdar, and his possession was, consequently, adverse to that of the defendant, who was the zemindar; and in that case, Mr. Justice Mitter and myself, properly, as I think, applied the ruling of the Judicial Committee of the Privy Council, which is cited in our judgment. In the present case, the plaintiff was by his own admission the tenant of the defendant, and he states that he paid them rent; his possession, therefore, does not in itself lead to any inference as to the character of the tenure. The fact of his having occupied the land and paid rent for twelve years, or even twenty years, is equally consistent with his being a tenant-at-will, a farmer, or a mokurruridar. I think, therefore, that the Judge was wrong in holding that on proof of possession, the plaintiff was entitled to a decree. Moreover, he did not merely ask for possession, but he asked the Court to adjudicate upon his alleged mokurruri title, and to restore him to possession as mokurruridar. I think the decision of the lower Appellate Court must be reversed with costs.

E. Jackson, J.

I am wholly of the same opinion.