

(1869) 05 CAL CK 0025

Calcutta High Court

Case No: Special Appeal No. 1371 of 1868

Shib Jatun Roy

APPELLANT

Vs

Panchanan Bose and Others

RESPONDENT

Date of Decision: May 10, 1869

Judgement

Loch, J.

Plaintiff sued for a declaration of title to certain lands, which he alleged had been erroneously surveyed as part of the defendant's village. The defendant denies the plaintiff's right to and possession of the lands, and the lower appellate Court, looking to a judgment of a Division Bench of the High Court in *Motee Lal v. Rane*, the wife of Maharaja Bhoop Sing 8 W.R. 64, held that it was not a proper suit for a declaratory decree. The Judge says that the High Court has ruled that cases of this nature are not proper suits in which to grant a declaratory decree.

2. We think the Judge has taken a mistaken view of the judgment to which he refers. The Court in that case held, that though the law permits declaratory decrees to be given, yet a Court of Justice is not bound to make such a decree on every application; and in the case then before it, the Court considered that no declaratory decree should be made, as the plaintiff had failed to take proper steps, before the proper authorities, to have the error in the survey map rectified. In the present case, however, we see that the act of the Survey Authorities has had the effect of throwing a cloud on the plaintiff's title, for the defendant claims the lands as part of his property. It is true that the proper course for the plaintiff to take, was in the first instance to have applied to the Survey Authorities to correct the map; and had he done so, the present litigation might have been saved. We have been referred to a case, *Kenaram Chuckerbutty v Dinonath Panda* 9 W.R. 325, in which it was held by a Division Bench (Bayley and Phear, JJ.) that, in order to entitle a plaintiff to a bare declaration of right u/s 15, Act VIII of 1859, he must make out, to the satisfaction of the Court, some act done by the defendant, which is hostile to and invades that right, and which would justify an injunction, or a decree for damages, or a decree for delivery of possession being passed against the defendant, if the Court had so

thought fit to exercise its discretion. We concur generally in the opinion expressed above, but do not think the rule laid down is quite applicable to the present case, for though the plaintiff might have had relief from the Survey Authorities, yet we see that in the suit the defendant has resisted the title of the plaintiff, and claims the lands as his own, and the contention has been carried on to the extent that a remand, for the purpose of making a local investigation, was ordered by the lower appellate Court. After this local enquiry, the first Court again took up and disposed of the case on the merits, and we think it is too late now for the opposite party to raise the objection that the plaintiff has no cause of action. Under this view of the case, we remand it to the Judge to be tried on its merits.