
(1869) 06 CAL CK 0019

Calcutta High Court

Case No: Special Appeal No. 452 of 1869

Brajanath Sarma and
Others

APPELLANT

Vs

Ram Chandra
Chowdhry

RESPONDENT

Date of Decision: June 18, 1869

Judgement

Hobhouse, J.

In this case the plaintiffs sued to recover possession of certain lands by declaration of their title by purchase to those lands, and for reversal of an order passed u/s 15, Act XIV of 1859 of date the 25th June 1866. The plaintiffs alleged that, in the year 1911, by two deeds of sale bearing date that year, one Kisto Prasad had sold the lands to them as bramatar, and that they had from that time held the lands as such bramatar, until they were dispossessed by the defendants under color of the Act XIV award above mentioned.

2. The defendants pleaded the Statute of Limitation, and averred that the plaintiff's title deeds were forged.

3. Both the Courts below have found for the plaintiffs, and one of the defendants now appeals before us specially. His sole ground of appeal is that when the plaintiffs sued for a declaration of right, the lower appellate Court was wrong in law in giving the plaintiffs a decree, without coming to a decision on the question of that right, and he relies on certain decisions of this Court, in Jussoda Dossee v. Sheikh Mahomed Fuckeer (1861) W.R. 367, Ramdhan Chuckerbutty v. Srimati Komal Tara 3 B.L.R.A.C. 99, note, Eckowri Sing v. Hiralal Seal 2 B.L.R.P.C. 4. The issue material to the point disputed before us laid down by the lower appellate Court was this:--"Does the disputed land constitute a rent-free ancestral right of the plaintiffs by purchase or not; and were they in possession thereof accordingly; and were they dispossessed, as alleged." The plaintiffs had relied upon their title deeds of the year 1211, and the lower appellate Court finds that these deeds are not supported by evidence; but the lower appellate Court goes on to say (in its decision, it must be remembered on the issue above quoted) that, "when it is considered

that effect has been given to those deeds, they are not doubted in the least; for it has been proved by the evidence of most of the witnesses that the plaintiffs were in enjoyment of the disputed lands for above 12 years on the allegation of purchase, and have been dispossessed since the last 2 or 3 years only; and further on the Court goes on to say that, "even in the absence of documentary proofs, it must be admitted that plaintiffs" long possession creates a right in their favor," and again that, "a right to land may be established by trustworthy oral evidence to the same extent as by documentary proofs."

4. Admitting that in a suit for declaration of right, a plaintiff is bound to establish that right before he can obtain a decree, we still think that by the finding of the lower appellate Court, the plaintiffs" right has in this case been substantially found. It is true that the lower appellate Court says that the plaintiff has failed to establish his title deeds, but the Court goes on to quote decisions of this Court, which lay it down that a title might be established as well by oral as by documentary evidence, and then the lower appellate Court distinctly finds in so many terms that the plaintiffs" long possession anterior to their dispossession by the defendants as of a *bramatar* tenure has been established by the evidence of witnesses.

5. We think that none of the precedents cited by the pleader for the special appellant show that this is a bad finding in law; and we are of opinion that in this there was a sufficient finding upon the evidence to start the plaintiff"s case, and to throw the burthen of rebutting that case by setting up a better title upon the defendants, and the lower appellate Court has found as a fact that the defendants have not relieved themselves of that burthen. The special appeal is dismissed with costs.