

(1880) 06 CAL CK 0003

Calcutta High Court

Case No: None

Fakera Doobay and
Others

APPELLANT

Vs

Sheo Churn Singh

RESPONDENT

Date of Decision: June 8, 1880

Citation: (1881) ILR (Cal) 91

Hon'ble Judges: Richard Garth, C.J; Mitter, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The present appellant says, that these intervening defendants may at some future time make a claim for their shares of the property as against him, and that, as long as there is any uncertainty as to their title, it would not be right for us to confirm the decree of the Court below giving the whole property to the plaintiff's. In support of this argument we are referred to the case of Sivagnana Tevar v. Periasami Tevar (I. L. R. Mad. 312; S. C. L. R. 5 I. A. 61 decided by the Privy Council.

That case appears to us to be totally different from the present. There the parties, who were said to be entitled to the property as against the plaintiff, were not made parties to the suit; and the High Court, although there was good reason for supposing that those persons were really entitled, declined to try the question whether they were entitled or not, considering that, as between the plaintiff and those persons, the question of title might be settled in another suit.

The Privy Council, however, held that this was wrong. They considered that the plaintiff must succeed, if at all, upon the strength of his own title, and that as three other persons were not made parties to the suit (as they ought to have been), they might in some future suit recover mesne profits, not only as against the plaintiff, but as against the defendants, who were bond fide purchasers for value, and had been in possession for many years.

But that is by no means the state of things here, because (for the purposes of this argument) it is admitted that all the claimants of the property are before the Court.

The plaintiffs claim the whole property, and the intervening defendants have been allowed to come in and prove their title to any part of it.

Having had this opportunity, they have not thought fit to press their case in the Courts below or to appeal to this Court. Consequently, the defendant who is now appealing is in no danger whatever of being sued by those two persons, because, as between him and them, the decree which has been given will be conclusive.

It is true that in this case the lower Courts have unfortunately said, that, as between the intervening defendants and the plaintiffs, it does not matter which is entitled, because the intervening defendants may at some future time recover their shares as against the plaintiffs. It may be that, by these observations of the lower Courts, the intervening defendants may have been induced not to press their case or to appeal as they otherwise would have done, and it is possible that if they should sue the plaintiffs at some future time they may find themselves in a difficulty; but that consideration does not affect the case of the defendant who is now appealing, as, between him and the intervening defendants, the decree in this case will be a conclusive bar.