

(1878) 04 CAL CK 0005

Calcutta High Court

Case No: None

Hurro Lall Sircar and
Others

APPELLANT

Vs

Mohima Chunder Dey
Sircar and Others

RESPONDENT

Date of Decision: April 25, 1878

Citation: (1878) ILR (Cal) 769

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

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that there is no sufficient ground in this case for adopting the judgment of the Munsif to the exclusion altogether of that of the Subordinate Judge.

2. Assuming that the latter has committed an error of law, it appears to us to amount to this, that he has failed to attribute proper weight to the potta which has been produced by the plaintiff's; and that neither he, nor the Munsif, has dealt quite properly with the plea of limitation.

3. These errors, we think, would only afford a ground for remanding the case to the lower Court for reconsideration; and we, therefore, propose to take that course, with the following remarks:

4. The question of limitation, as it seems to us, has not been sufficiently distinguished in either of the lower Courts from the question of title. In some cases, as for instance where grants or leases have been made of waste or jungle lands, and the right to those lands is disputed, it is often impossible to give evidence of acts of ownership or possession over the property because it is uninhabited and uncultivated, and no acts of ownership by any one have been exercised over it. In such cases it is often necessary, for the purpose of deciding the question of limitation, to rely upon very slight evidence of possession, and sometimes

possession of the adjoining land, coupled with evidence of title, such as grants or leases, and the Courts are justified in presuming, under such circumstances, that the party who has the title has also the possession.

5. But in a case like the present, where the land in question appears to have been occupied, it is generally proper to deal with the question of possession, for purposes of limitation, as distinct from the question of title. It very frequently happens that the title to land is admitted to be in one person, whilst a twelve years" possession by another person has barred that title; and in this case it may well be that the potta under which the plaintiffs claim is a perfectly genuine instrument; but that the defendants or their tenants have, by adverse possession for twelve years, excluded the plaintiffs from their right.

6. If the land in question is capable of occupation and has been actually occupied, as we presume to be the case, the question of limitation may and ought to be dealt with separately from the question of title.

7. Then, again, in dealing with the question of title, it must be borne in mind that the potta of 1821, although proved to be genuine, would, as against the principal defendants, be no evidence, unless it were shown that the plaintiffs or their predecessors in title, at some time or other since 1821, had been in possession under it.

8. The potta is merely a lease granted by the owners of an estate to the plaintiffs" ancestors of a piece of ground including the land in dispute; but this grant would be no evidence of title to that land as against the owners of an adjoining estate, unless possession under it were proved: coupled with possession the potta would add great strength to the plaintiffs" evidence.

9. Then, as regards the proof of the potta, if it can be shown to have been for thirty years in the custody of the plaintiffs or their predecessors in title, and was produced by them at the trial, the Court might presume that it was duly executed by the person or persons who professed to have done so: and the fact that it was produced in the former suit in 1848 would be evidence of its authenticity, although per se no evidence of title as against the defendants.

10. From these remarks it will appear that the evidence of the plaintiffs" possession ought carefully to be investigated and weighed, both on the question of title and also on that of limitation.

11. The Subordinate Judge, if he thinks fit, may receive further evidence of possession on either side. The costs in all the Courts will follow the result of the trial on remand.