

18 Ind. Cas. 852

Calcutta High Court

Case No: None

Lakhi Charan Shaha
and Others

APPELLANT

Vs

Chuni Miah and Others

RESPONDENT

Date of Decision: March 4, 1913

Citation: 18 Ind. Cas. 852

Hon'ble Judges: Stephen, J; Holmwood, J

Bench: Division Bench

Judgement

1. This appeal arises out of a suit in which the plaintiffs seek to recover possession of five plots of land by virtue of a title they acquired at an

auction sale to a permanent tenure covering the land in question. The defendants set up different defences, and it is found that they came into

possession of different plots of land under different rights at different times, and that the plaintiffs failed to prove that there was a community of

interest between them or collusion. The finding as to collusion is open to some doubt, but for present purposes may be accepted as it stands.

Under these circumstances, both the lower Courts have held that the suit must fail for misjoinder of causes of action, under the old Code which

applies to the case and it has been dismissed accordingly.

2. This decision is erroneous as being contrary to the rule laid down in Nundo Kumar Niskar v. Banomali Gayan 29 C. 871 where it is said: ""The

cause of action of a plaintiff suing in ejectment cannot, so far as we can perceive, be affected by the title under which the defendant professes to

hold possession. It matters not to the plaintiff how the defendant may explain the fact that he is in possession or seek to defend his possession.

What concerns the plaintiff is that another is wrongfully in possession of what belongs to him, and that fact gives him his cause of action. If that is so

where there is but one person in possession, can there be a difference when the land is in possession of more than one? We think not.... What the

plaintiff is entitled to claim is the recovery of possession of his land as a whole, and not in fragments, and we think that all persons, who oppose him

in the enforcement of that right, are concerned in his cause of action, and ought accordingly to be made parties to a suit in which he seeks to give

effect to it." This seems exactly to cover the present case, the only possible distinction between the two being that whereas in that case all the

defendants claimed to hold the land under the same landlord, in the present that is not so. This difference, however, does not affect the principle of

the decision. After having considered the decisions of *Lokenath Surma v. Keshab Ram* 13 C. 147; *Sudhendu Mohun Roy v. Durga Dasi* 14

C. 435 and *Ram Narain Dut v. Annoda Prosad Joshi* 14 C.681 which may be among those that this Court did not discuss on the previous

occasion we have referred to, we consider that the decision, we have mentioned is binding on us. If any practical inconvenience is found in

applying its principle to any particular case, it is open to the Court to have resort to the framing of such issues as may be necessary in the manner

indicated by Scott, C.J., in *Umabai Mangesh rao v. Vithal Vasudeo Shetti* 33 B. 293 : 5 M.L.T. 230 : 11 B.L.R. 34 : 1 Ind. Cas. 120.

3. This appeal is consequently allowed. The judgments and decrees of the lower Courts are set aside, and the case is remitted to the first Court

that it may try the case according to law. The appellant is entitled to his costs in this Court and the lower Appellate Court in any event.