

(1878) 04 CAL CK 0011

Calcutta High Court

Case No: None

Mahomed Ibrahim
and Others

APPELLANT

Vs

M.B. Morrison

RESPONDENT

Date of Decision: April 4, 1878

Citation: (1880) ILR (Cal) 36

Hon'ble Judges: Mitter, J; Birch, J

Bench: Division Bench

Judgement

Mitter, J.

The plaintiffs' claim in this case is in respect of a large tract of chur lands, which was, it is alleged, formed by the recession of the River Kosi between 1273 and 1275 (1867 and 1869). The plaintiffs allege that the land in suit appertains to their patni of Mouza Khera. The defendant holds a neighbouring mouza called Madhoora. His case is, that the disputed land was thrown up more than twelve years, and that ever since its formation it has been held as part of Mouza Madhoora, to which it really appertains. The lower Court has dismissed the claim as barred by limitation. In appeal it is contended, that this being a chur land the onus of proving adverse possession for more than twelve years is upon the party who sets up that plea. It has been also urged that, supposing the onus of proof is upon the plaintiff, that onus has been satisfactorily discharged. We agree with the lower Court that the evidence adduced by the plaintiffs to establish the formation of the chur in dispute within twelve years from the date of suit is not satisfactory; consequently, if the other contention as to the onus of proof fails, the appeal must be dismissed. It is a settled rule of law in this country that, whenever the plea of limitation is raised, it is for the plaintiff to show prima facie that the cause of action upon which he is suing is not barred by limitation. But the case of a land has been said to be an exception to this rule, and the reason suggested for this exception is, that chur lands during the first few years of their existence are generally not culturable. To a certain extent this contention seems to us to be correct. Where limitation is pleaded to a suit, the

subject-matter of which is chur land not brought under cultivation, it is for the defendant, before he can succeed in his plea, to establish that he has exercised adverse rights of ownership over the disputed land for more than twelve years. But when the suit relates to a piece of chur land already brought under cultivation, the plaintiff, in order to get over the plea of limitation, must at least establish that either the land in suit formed within twelve years or was not in a fit state of cultivation within that period. Otherwise in all cases where the plaintiff shows that a subject-matter of a particular suit was chur in unculturable state some time previously, however remote it may be, even a century before, it would be for the defendant to establish the plea of limitation by proving adverse possession for more than twelve years. This latter rule may seem more reasonable or consonant to justice; but the whole current of decisions being for a very long time in the other way, it is now too late to adopt it. Several cases were cited before us in support of the appellants' contention. But they are not applicable to the facts of this case. They are simply to the effect that when limitation is pleaded in respect of lands which are either in a jungly or unculturable state, it is for the defendant to substantiate the plea by establishing adverse possession for more than twelve years. But in this case, the land in suit is, and has been, under cultivation for some time past, and consequently the rule laid down in these cases cannot afford any guide for the determination of the question of limitation in this case. However, there is one decision quoted before us which requires special notice, because at the first sight it seems to support the contention of the appellant. It is the case of *Sumud Ali v. Musst. Kurimoonissa and others* (9 W.R.124). We have referred to the paper-book of that case, and it shows that no different rule has been laid down in it. It was a suit for possession of a piece of khal bhuratee land, and the plea of limitation was overruled by the lower Appellate Court, upon the ground that the suit was brought within twelve years from the time when it became culturable. The defendant preferred a special appeal, and it was then held that if the defendant could show that he took possession of the land before it became fit for cultivation, and at a time which would be beyond twelve years before the date of suit, the suit would be barred by limitation. Consequently, what was decided in that case was that there may be adverse possession taken of lands not culturable, but that such possession must be established by the party setting it up. This decision also, therefore, does not in any way help the appellants.

2. The appeal is accordingly dismissed with costs.