
(1872) 01 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 835 of 1871

Umar Khan

APPELLANT

Vs

Amirunnissa Begum

RESPONDENT

Date of Decision: Jan. 10, 1872

Final Decision: Dismissed

Judgement

Markby, J.

This appeal relates to a share in certain land, possession of which the plaintiff in this suit seeks to recover. The plaintiff has shown that he was in possession of it from 1856 to 1868 for a full period of twelve years, claiming to hold it under a purchase from certain persons whom he alleged to be the owners. It appears that, in 1859, a suit was brought by the present defendant against the present plaintiff to recover possession of this very identical land, and that the present plaintiff set up as a defence in that suit the purchase on the strength of which he has all along claimed to hold, but failed, and a decree was given against him. It is found by the lower Courts that, notwithstanding this decree, the plaintiff remained in undisturbed possession of the property until the year 1868, when the defendant induced the tenants to give kabuliats to her and acknowledge her as the owner, since which time she has been collecting the rents. The lower Appellate Court has held that, under these circumstances, the plaintiff has a good title to the property by reason of his twelve years' possession. Upon the argument of this appeal it is not denied that twelve years' uninterrupted possession will give a good title to land in accordance with the decision in the case of *Gunga Gobind Mundul v. The Collector of the 24-Pergunnas* 11 Moo. I.A., 345; but it is contended that the prosecution of the suit in 1859, and the decree obtained therein was an interruption, and that after that decree the plaintiff would not get a title until at least twelve years had elapsed from the date of the decree.

2. It is somewhat puzzling to find such a curious state of things as a party obtaining a decree for possession and then making no use of it. But as, under s. 20, Act XIV of 1859, that decree cannot now be executed, and has in fact become absolutely null, and as

plaintiff did, notwithstanding the decree, remain in possession wholly undisturbed, and further, as there is no suggestion that the title of the defendant was in any way whatever acknowledged by the plaintiff, the allegation being that the defendant actually obtained possession under the decree, which allegation is found to be false, I think the plaintiff must be considered as having acquired a good title by his twelve years' possession. Had the situation of the parties been reversed, and had the defendant, instead of obtaining recognition of her title by the tenants, brought the suit to recover possession, she must have failed, inasmuch as her cause of action clearly had not arisen within twelve years; and the principle which has been adopted in this country, and which I think is a most salutary one, appears to be that the period of possession which is sufficient to bar the remedy is also sufficient to transfer the right. I therefore think that the decision of the lower Appellate Court upon this point was right in law, and that this appeal ought to be dismissed with costs.

⁽¹⁾ 8 W.R., 386. See also *Raja Baradakant Roy Bahadur v. Prankrishna Paroi*, 3 B.L.R. (A.C.), 343.