

(1925) 07 CAL CK 0047

Calcutta High Court

Case No: None

Ram Kumar Das

APPELLANT

Vs

Haranarain Das alias Dinabandhi
Das and Others

RESPONDENT

Date of Decision: July 3, 1925

Acts Referred:

- Cess Act, 1880 - Section 95
- Evidence Act, 1872 - Section 13

Citation: AIR 1926 Cal 727 : 92 Ind. Cas. 104

Hon'ble Judges: Graham, J; Babington Newbould, J

Bench: Division Bench

Judgement

1. This is an appeal against the decree which the plaintiffs have obtained for khas possession of the land in dispute on establishment of their niskar right thereto. The only point urged in this appeal is that in coming to a finding in favour of the plaintiffs-respondents the lower Appellate Court has relied on certain documents which are inadmissible in evidence. These documents are Exs. 10, 101, 11, 13, 14, 4, 2, 8 and 9. Exhibits 10, 13 and 14 are the decree plaint and soldnama in a particular suit. In this suit the lands in suit are described as the niskar property of Shama Gharan Das which; had been inherited by his heirs who were parties to that suit.

2. It is contended that these documents cannot be admissible as in that suit there was no contest as to the plaintiff's right and it cannot be said that this right was asserted or claimed within the meaning of Section 13 of the Evidence Act. The latest ruling on this point is the case of Gopi Sundari Dasi v. Kherod Gobinda Ckowdhury 82 Ind. Cas. 99 : 28 C.W.N. 942 : AIR (1925) (C.) 194. Reference is there made to the decision of the Judicial Committee of the Privy Council in Dinomoni Chaudhurani v. Brojo Mohini Chaudhurani 29 C. 187 : 29 I.A. 24 : 6 C.W.N. 386 : 12 M.L.J. 83 : 4 Bom. L.R. 107 : 8 Sar. P.C.J. 224 (P.C.), where Lord Lindley in delivering their Lordship's

judgment observed that the words of Section 13 of the Evidence Act were very wide. In our opinion they are wide enough to cover the assertion of niskar in the partition suit where that right was in dispute.

3. On behalf of the appellant great stress is laid on the fact that Mr. Justice Richardson who delivered that judgment referred to the right of the plaintiff being successfully asserted in the judgment which was sought to be put in evidence. Section 13 does not qualify the word "asserted" by the epithet "successfully." There is nothing in that Section which requires that the right should be successfully asserted. But giving a wide interpretation to it the mere assertion is sufficient. We hold, therefore, that there is no reason to exclude this documentary evidence Exs. 10, 13 and 14. As regards the other documents to which objection has been taken with the exception of Ex. 2 the same remarks apply. They are, in our opinion, admissible as evidence of transactions in which the plaintiffs' niskar right was asserted. In second appeal we have to deal only with the question of the admissibility in evidence of the documents and not their evidentiary value. In the case of some of them, for instance, Exs. 10, 13 and 14 and also Exs. 8 and 9 the ehitta and khatian their evidenciary value appears to be slight. Still they are some evidence that the plaintiffs were in possession of the land in dispute claiming it as their niskar. It is clear with regard to Exs. 10(1) the decree passed in a damage suit in 1845 brought by the plaintiff's predecessor against Janaki Ram Panda that the lower Appellate Court was wrong, in describing Janaki Ram Panda as the predecessor-in-interest of defendant No. 1. The defendant No. 1 the purchaser at a sale for arrears of revenue cannot rightly be described as the predecessor-in-interest of the previous proprietor. But this does not affect the question of the admissibility of this document, since it is admitted not as a document inter partes but under the provisions of Section 13 of the Evidence Act.

4. As regards Ex. 2 we hold that the contention raised on behalf of the appellant must prevail. Exhibit 2 is a road cess return submitted by the plaintiffs. Section 95 of the Cess Act IX B.C. of 1880 provides that such a return shall not be admissible in favour of the person on whose behalf it has been-filed. The learned Subordinate Judge appears to have held that this document was admissible because it was put in evidence not directly as an admission by the plaintiffs but because considered with other evidence it proved an implied admission by defendant No. 1 of the plaintiffs' niskar title. But even so, this document was put in evidence as a document in favour of the plaintiffs, and was, therefore, excluded by the provisions of Section 95. That Section is absolute in its terms in declaring that a road cess return shall not be admissible in favour of the person on whose behalf it was filed, and it is immaterial whether it was put in evidence directly to prove an admission for indirectly for some other purpose. This being so we must decree the appeal on this ground.

5. We set aside the judgment and decree of the lower Appellate Court and remand the appeal to him for re-hearing after excluding from consideration the document

Ex. 2. The costs will abide the result.