(1869) 04 CAL CK 0023

Calcutta High Court

Case No: Special Appeal No. 2439 of 1868

Sheikh Jan Mohammed		APPELLANT
	Vs	
Mussamut Rani Ram and Another		RESPONDENT

Date of Decision: April 9, 1869

Judgement

Norman, J.

The plaintiff sues to recover 111 bigas of land describing it as part of his jote-jumma of 175 bigas, alleging that he was dispossessed, on the 5th of Sraban 1264, Mulki, i.e., the 18th of July 1857. Besides dealing with some unimportant issues, which it is not now necessary to consider, the first Court find a that the lands in question do not belong to the jote-jumma of the plaintiff; that the plaintiff''s witnesses do not show when the plaintiff was dispossessed; and that the land not being part of the plaintiff''s jote-jumma, was surrendered by him to the zamindar, in Baisakh 1263 Mulki, which would be April 1856, and dismisses the plaintiff''s suit. The Sudder Ameen seems not to understand the conduct of the parties, but he very properly decides the ease, according to the evidence before him. The principal Sudder Ameen reverses this judgment, and declares that the plaintiff is entitled to recover. It appears to us that his decision is very unsatisfactory. The principal defendant, Srinandan, has been in possession for more than 11 years before the commencement of the suit, under a purchase from the patnidar, Imdad Ali. If the istafa, or relinquishment, to Imdad Ali, is not genuine, it is very difficult to suppose that Imdad Ali was not in quiet possession and in the apparent full enjoyment of the right of ownership, from a period anterior to the date when he sold to Srinandan. It is not the least likely that Srinandan would have bought, and on his purchase got possession of, property, of which the plaintiff, down to the date of his purchase, was in possession, unless (which is not suggested) the plaintiff was colluding with Imdad Ali to cheat Srinandan. Therefore it will be an issue to be disposed of, whether the plaintiff''s suit is not barred by limitation, if the istafa is not genuine. If that issue of limitation had been raised in the lower Courts, we should not have had the smallest

hesitation in dismissing the suit on that ground.

2. It has been very properly pointed out by Mr. Peterson, that the plaintiff''s title on which he came into Court, is that the land in question is part of his jote-jumma. His own witnesses say that it is not so. The first Court considers that the decrees do not prove it to be so. The Principal Sudder Ameen says, he agrees with something, which he supposes to be the opinion of the lower Court, viz. that the land was attached to the plaintiff''s jumma, and seems to rely on the decisions as proving it. If the plaintiff held 111 bigas, at a rent of 12 annas under a mokurrari patta, it certainly is difficult to suppose that he would have surrendered such a tenure to the zamindar for nothing. But the broad fact is, that he has actually, according to his own showing, for nearly 12 years, acquiesced in a dispossession by the zamindar. It seems almost impossible to suppose that he would have done so, if he had really the right, which be now alleges himself to have possessed.

3. Again the plaintiff''s witnesses say that he and his co-sharers held the 111 bigas. No one has deposed that the plaintiff was in exclusive possession, and we cannot understand on what principle the Principal Sudder Ameen on this evidence gave the plaintiff a decree for the entire land. One of the plaintiff''s own witnesses, and all the witnesses for the defendants, depose that the land was surrendered by the plaintiff. If the plaintiff had only an eight-pie share, as alleged by an intervener, or had merely some indefinite right of pasturage, the surrender may have been real, and, in the absence of full knowledge on points of this kind, it is most dangerous to discredit the testimony of a number of witnesses, on an assumption of its improbability. We find it most difficult to believe that the plaintiff has any title whatever to the land in dispute, or, if he ever had any title, that his suit is not barred by limitation.

4. But, if the plaintiff has a legal title to the land and has stood by without asserting his rights, allowing Imdad Ali to sell to the defendant, standing by while Srinandan has built on and planted the land in the belief which the plaintiff has encouraged, or at least permitted him to entertain that he had a good title, it will become a question whether the utmost that the plaintiff is entitled to is not to get a reasonable rent from him. See the judgment of Mr. Justice Trevor in Hurro Chundra Mookerjee v. Hullodhur Mookerjee W.R. (1864) 166. The decision in that case appears to be in accordance with sound principles of equity. There is a case cited in Story''s Equity Jurisprudence Vol. II 8th Edition. &#65533; 1549 p. 758. The Somersetshire Canal Company v. Harcourt 2 De Gex Jones, 596 : 24 Beav. 571, decided on a similar ground; see also The Rochdale Canal Company v. King 20 L.J. Chancery, 675 : 16 Beav. 630. The rule of equity is thus stated by Lord Elden in Dann v. Spurrior 7 Ves. 231. The Court will not permit a man knowingly, though passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is, in many cases, as strong as using terms of encouragement. When a man builds a house on land supposing it to be his own or believing he has a good title, and the real owner

perceiving his mistake abstains from setting him right, and leaves him to persevere in his error, a Court of Equity will not allow the real owner to assert his legal right against the other, without at least making him full compensation for the monies he has expended. Other cases on this subject are referred to in Kerr on Injunctions, 41, 226. The decision of the Lower Appellate Court is reversed with costs, and the case remanded for trial. The defendants'' costs of the former trial in the Lower Appellate Court will abide the result, and defendants must get them, if they ultimately succeed, and the suit is dismissed. If the suit is decreed in part, each party will bear his or their own costs of the former trial in the Lower Appellate Court.