Ram Ballav Marwari Vs Mriganka Lal Mukherjee

Court: Calcutta High Court

Date of Decision: June 5, 1925

Citation: AIR 1926 Cal 660 : 91 Ind. Cas. 715

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

Bench: Division Bench

Judgement

1. This is an appeal against a decision of the District Judge of Bankura confirming a decision of the Subordinate Judge of that place. The plaintiff

sued the defendant to recover possession of a plot of land about 1 bighq, in area. The plaintiff, claimed the land as a portion of the land which he

had been granted under a lease dated the 12th Magh 1285 from the then patnidar Ali Zamin. The defendant purchased the patni right at a patni

arid rent sales in the years 1913 and 1914. The dispute between the parties is whether the land in suit is included in the land which was leased to

the plaintiff. The lease has not been translated or put forward before us but from the judgment it appears that the land is described as measuring

2Ã¯Â¿Â½ bighas from, north to south and 16 cottas from east to west. At the trial the main issue was as to the position of the line towards the south

from which this 2Ã¯Â¿Â½ bighas to the north should be measured. In Aswin 1286 B.S. the plaintiff''s father had taken a settlement of some ghativali

land immediately to the south of the land leased by the putnidar. According to the defendant''s case 2Ã¯Â¿Â½ bighas measured from the boundary

between the ghat wall lands would not include any of the land in suit. It is found by both, the Courts below that the correct boundary line is shown

in the map prepared by the Commissioner as the boundary line of the map prepared in 1285, The finding. of the District Judge is ""Taking all the

facts and circumstances into consideration I think the inference is justified that what was treated as the boundary line in 1879 was, v if not the exact

line of 1815 at least closely approximate thereto"". He has further found that shortly after his purchase the plaintiff''s father Amrita Lai Mukherjee

erected boundary pillars showing the northern extremity of his land and that the then putnidar was aware of this. From this the lower Appellate

Court has drawn the inference that it was understood at that"" time that the disputed land was included in the land leased under the potta of 1285

B.S. It is further found that ever since then until dispossessed by the defendant, Amrita Lai Mukherjee the plaintiff"s father exercised such acts of

possession as were possible in respect of a piece of waste land. On these findings we see no reason to interfere in second appeal with the decree

of the lower Appellate Court. As already stated the lease has not been put before us and. we are unable. to say whether it should be so construed

that the measurements are intended to limit the land leased exactly to the area described in the deed or whether the lease can be interpreted in the

light of the circumstances and we see no ground for holding that the lower Appellate Court was wrong in deciding that the fact that the plaintiff"s

predecessor was allowed to occupy the land in suit to the knowledge of the patnidar shows that it was the intention of both parties that this land

should be inducted in the lease. It is further found by both the Courts below that the plaintiff has obtained a title by adverse possession. On behalf

of the appellant it is urged that there could be no title by adverse possession since his purchase at a putni and rent sale would give a right to the

land as it was at the creation of the putni tenure without any encumbrance subsequently, created thereon. This point was not urged in either of the

lower Courts and we are unable on the material before us to hold that the defendant by his purchase was entitled, to ignore the long possession of

the plaintiff and his predecessor.

2. The further point taken is that the learned Subordinate Judge has based his judgment on the result of a local inspection made by him. It was

pointed out in Rai Kishori Ghose v. Kumudini Kanta Ghose 14 Ind. Cas. 377 : 15 C.L.J. 138, that since the amendment of the C.P.C. it may well

be argued that the intention of the Legislature was to adopt the English rule and that the Judge, should not himself hold a local investigation with a

view to gather information which he might use as the foundation of his judgment although he might inspect the locality with a view to enable him to

understand the evidence."" But we are unable to hold that this action of the learned Judge has in any way pre judiced the appellant. He visited the

spot, at the request of the parties and there is nothing to suggest that he formed any conclusion on the evidence which he might have altered had the

appellant been given an opportunity of criticising a recorded note of his inspection. In the absence of the prejudice of the parties we hold that the ,

mere fact that the learned Judge held the local investigation without recording a note thereof is not a sufficient ground for setting aside his decision.

3. For these reasons we dismiss the appeal with costs.