(1912) 07 CAL CK 0044

Calcutta High Court

Case No: None

Shiddheswari Dasya and Another		APPELLANT
	Vs	
Shashi Bhushan Chowdhury and Others		RESPONDENT

Date of Decision: July 25, 1912

Citation: 16 Ind. Cas. 39

Hon'ble Judges: Sharf-Ud-Din, J; Coxe, J

Bench: Division Bench

Judgement

1. This appeal arises oat of a suit for recovery of possession. Bath the lower Courts have dismissed the plaintiffs'' suit on the ground of limitation and also on the ground that the plaintiffs failed to establish their title to the lands in suit.

2. The points taken on behalf of the appellants are, first, that the suit was wrongly dismissed oh the question of title without ascertaining whether the lands belonged to the plaintiffs'', or to the defendants'' mouzah; secondly, that the onus was upon the defendants and that it was wrongly placed upon the plaintiffs by the lower Court; and thirdly, that inasmuch as it has been found by the lower Appellate Court that some of the lands in dispute were waste lands, the whole suit of the plaintiffs should not have been dismissed,

3. It appears that there were two mouzahs, Mouzah Bijalbar and Mouzah Shukandighi, the former belonging to the plaintiffs and the latter to the defendants. The question before the lower Courts was whether the area in dispute appertained to Mouzah Bijalbar or to Mouzah Shukandighi. The Subordinate Judge found it necessary to depute an amin in order to ascertain, by re-laying the revenue survey map of the place, whether the lauds in dispute belonged to the plaintiffs or to the defendants'' mouzah. After a local inquiry, the amin submitted his report and it is admitted that that report was in favour of the plaintiffs. This report was submitted by the amin on the 6th January 1906; but before that, on the 21st December 1905, an application was made by the plaintiffs in which they took exception to certain

omissions said to have been made by the amin in his inquiry. This application, however, was not pressed. It appears, however, that the defendants controverter the accuracy of the results of the amines investigations at a very early period of the proceedings, and that in the end, the plaintiffs also were compelled to admit its inaccuracy. At the time of argument, after the hearing, when these defects and inaccuracies were pointed out, the plaintiffs asked the Court to order a fresh investigation which was refused. The learned Subordinate Judge in his judgment says: "They had their expert men with the amin and I cannot say that they could not know of the defects after the amin had submitted his report and map." Further on. in his judgment he says: I may as well say that if the plaintiffs'' men hud properly helped the amin in securing the proper position in the locality of the trijunction point, this disastrous result of the inquiry would never have occurred." It is admitted before us by the learned Vakil for the appellants that the amiris report is inaccurate. It appears that the plaintiffs took no steps after their application of the 21st December. We think that in the circumstances, the Courts below were right in refusing a fresh inquiry at the eleventh hour. It is now too late in the day to ask this Court to send this case back to the lower Court for the purpose of a fresh investigation. The amin''s report is merely evidence. If a litigant is a party to such an inquiry and knows that it is carelessly and badly done and yet is content to go to trial upon it, he cannot reasonably ask at the last moment for an opportunity to give fresh evidence, because it is found that the evidence on which he willingly relied is worthless.

4. As to the question of onus, we think that there can be no doubt that generally the onus is on the plaintiff to prove that he had been in possession of the disputed area within 12 years before the institution of the suit. In cases of dried up bheels, re-formation of diluviated lands not brought under the plough and lands covered with jungle, the plaintiff must prove his title; see the case of Mahomed All Khan v. Khaja Abdul Gunny 9 C. 744 : 12 C.L.R. 257; and in such cases if he succeeds in proving his title and that the land probably remained unfit for occupation until a period within twelve years of suit, it is then for the defendant to prove that the plaintiff has not been in possession within that period. But in the present case, we find that the defendants purchased an 8-annas share of Mouzah Shukandighi in 1288 at a private sale and the remaining 8-annas at a revenue sale in 1293. From the judgment of the lower Court, it is clear that Sonthals were settled on portions of the disputed lands as tenants of the defendants and have been in possession as such and that the defendants have treated the disputed lands after their purchase as their own since 1292-93. The learned Judge, after dealing with the evidence on both sides, has come to the above finding.

5. In these circumstances, we do not think that he has erred in any way with respect to they incidence of the burden of proof.

6. The last point on which stress has been laid relates to the waste lands. What is found by the learned District Judge on this point is this: He--says:--"I must, however, add that as there are small plots of waste lands within the disputed area, I am unable to say that the defendants were in actual possession of every inch of the disputed area, though it should also be stated that there is proof that they, through their tenants, have been in adverse possession of comparatively a large area for over 12 years."

7. It is contended before us that, inasmuch as there is a finding of the lower Appellate Court that there are some plots of wastelands within the disputed area, it is necessary to ascertain whether those plots are situated in the plaintiffs'' mouzah or in the defendants'' mouzah and that, if they are within the former, the suit cannot be barred by limitation so far as those plots are concerned. But the words used by the learned District Judge in his judgment are "waste lands" and not "jungle." ''Waste'' is a more comprehensive term. It is clear that in a case like this, what is necessary for a person claiming land by adverse possession to show is that he has all along claimed the lands as his own and treated them as such, and it is not necessary on his part to prove that he has been exercising acts of possession over every inch of the lands adversely to the opposite party. In support of this view, we may refer to the decision in the case of Sivasubramanya v. The Secretary of State for India in Council 7 C. 256 : 8 C.L.R. 533, in which it was held that where a tract of land with a defined boundary has been throughout claimed by a person as owner and acts of ownership have been done on various portions of it, such acts may be accepted as evidence of the possession of the whole tract. Under the circumstances, this point also fails. This appeal is, therefore, dismissed with costs.