

(1930) 08 CAL CK 0027

Calcutta High Court

Case No: Appeals Nos. 610 and 718 of 1928 with Cross-objection in No. 718

Paresh Chandra Dutta and
others

APPELLANT

Vs

Amaresh Kumar Bose and others

RESPONDENT

Date of Decision: Aug. 26, 1930

Final Decision: Dismissed

Judgement

C.C. Ghose, J.

In Appeal No. 610 the appellant is one Jyotish Chandra Dutta and in Appeal No. 718 the appellants are Asalat Molla and others. The facts out of which the present litigation has arisen shortly stated are as follows: Certain lands are held under the landlord Rai Bahadur Kiron Chunder Roy. Out of these lands dags 1-43 appertain to a jama of Rs. 63 in the name of Girish Chandra Dutt (defendant 1) and dags 44-46 appertain to a jama of Rs. 17-1-3 gandas, also in the name of defendant 1. Dag 47 appertains to a jama of As. 4, in the name of defendant 1 and under certain other landlords. Dags 48 and 49 appertain to a jama of Rs. 5-1-3 gandas in the name of one Debnath Dutta who was a brother of defendant 1 under a third set of landlords; dags 50 and 51 appertain to a jama of Rs. 2-8-6 in the name of Deb Nath Dutta under a fourth set of landlords; dags 52, 53, 54 appertain to a jama of Rs. 3-13-9 in the name of Debnath Dutt under a fifth set of landlords: Dags 55, 56 and 57 appertain to jama of Rs. 7-1-0 standing in the name of Beni Madhab Dutta who was also a brother of defendant 1 under a sixth set of landlords and dag 58 consists of niskar lands in the name of defendant 1. It is alleged that defendant 1 and his three brothers, Debnath Dutta, Beni Madhab Dutta and Kailas Chandra Dutta were members of a joint Hindu family and that the above properties were acquired by the joint family. The plaintiffs allege that they obtained permanent lease of a 8 annas share from the widow of Kailash and the daughters of Beni Madhab and they have purchased a four annas share from the sons of Debnath. They were however unable to obtain possession of the properties because of the resistance offered by the principal defendants who are the defendants 1-44. Plaintiffs therefore claim half

possession to the extent of 12 annas share in some of the plots and they want possession through tenants in the other properties. The contest is with reference to the lands standing in the name of defendant 1. It is alleged on behalf of defendant 2 that these lands, i.e., the lands standing in the name of defendant 1 are his self-acquired properties and that his brothers had no interest therein. The first Court held that the properties in dispute were properties belonging to the joint family, i.e., the joint property of defendant 1 and his brothers and their heirs. In that view of the matter the suit was decreed. There was an appeal to the lower appellate-Court which found that the properties in the suit had been acquired by defendant 1 with his own moneys but that the same had been thrown by him into the common stock and had been treated since then as joint family properties. With regard however to certain of the lands the appeal was allowed. It is against this judgment and decree of the lower appellate Court that the present appeals have been brought.

2. In order to fully understand the position, we have in this case taken the trouble of examining the entire record and of perusing the pleadings in the suit as also the evidence adduced by the parties. It appears that in addition to the oral evidence in the case the lower appellate Court has relied upon Exs. 18, 20Q, 21D, 21E, 19D and 20U. We have examined carefully these documents and although it is perfectly true that where the allegation is that certain properties purchased separately by members of a joint Hindu family have been thrown into the common stock the evidence to support such an allegation must be sufficiently strong, there can be no doubt that the lower appellate Court after a careful consideration of the entire evidence on record has come to the conclusion that the conduct of defendant 1 showed that he had agreed to the properties in question being thrown into the common stock, i.e., he has agreed to the blending of these properties with the joint family properties which were in existence. The lower appellate Court has given in its judgment various reasons. I am free to confess that it may be argued with a certain degree of plausibility if one takes these reasons separately that the lower appellate Court should have insisted upon stronger evidence being produced before it than what was produced, but the reasons must be taken cumulatively and if that is done, then it is impossible to say that the judgment of the lower appellate Court cannot be supported. In my view there is a great deal to be said on behalf of the respondents which would enable one to hold that the conclusions arrived at by the lower appellate Court have been correctly drawn from the evidence on record. I am therefore not prepared to disturb the findings of facts arrived at by the lower appellate Court in any way.

3. As regards the tenant-defendants I think their case has been adequately dealt with by the learned District Judge and there is no reason whatsoever why a different conclusion should be arrived at in their case. The result therefore is that in my view these appeals ought to stand dismissed with costs and I would order accordingly. The cross-objections in Appeal No. 718 were not pressed and are disallowed.

Patterson, J.

4. I agree.