(1925) 01 CAL CK 0044

Calcutta High Court

Case No: None

Radha Kishan Marwari	APPELLANT
Vs	
Sarbeswar Nag and Others	RESPONDENT

Date of Decision: Jan. 12, 1925

Acts Referred:

- Evidence Act, 1872 - Section 21

Citation: 86 Ind. Cas. 674

Hon'ble Judges: Suhrawardy, J; Cuming, J

Bench: Division Bench

Judgement

Suhrawardy, J.

Plaintiff No. 1 along with his lessee plaintiff No. 2 brought this suit for establishment of title to and recovery of possession of a plot of land alleging dispossession by the defendants in 1918. Plaintiffs'' claim is based on a lease from the alleged owners of the land Makhan Roy and Ananta Roy dated 14th Falgun 1306. The defendants resist the plaintiffs'' claim by virtue of a lease dated 14th Chaitra 1306 from defendants Nos. 2 and 3 to whom they assert the land in suit belongs: They further deny plaintiffs possession within the statutory period and also claim title by adverse possession. On these pleadings two principal issues were raised as to title and limitation. In the Trial Court the learned Munsif found both the issues against the plaintiffs and dismissed the suit. On appeal by the plaintiffs the learned Subordinate Judge set aside the decision of the Trial Court and decreed the suit. Hence this appeal by the defendants. It is admitted that none of the parties has been able to produce any document showing title in their respective lessors the question of possession, therefore, assumes paramount importance. The learned Subordinate Judge in finding possession of the plaintiffs has relied, among other pieces of evidence, on a statement made by Makhan Roy one of plaintiffs'' lessors in pottah (Ex. 4). This pottah is a lease granted by Makhan in 1305 to another person of a plot of land adjoining and to the east of the disputed land. In giving the boundaries of

the plot leased, out by the pottah the western boundary is given as the plot in suit which is described as belonging to the lessor. The learned Subordinate Judge has attached great importance to this statement in the pottah by the plaintiffs'' lessor made a year before the plaintiffs lease and at a time when there was no dispute about the land in suit. It is argued before us and that is the only point urged in the appeal that the above statement in the pottah cannot be used as evidence against the defendants as it is in the nature of an admission which cannot be used in favour of the person making it or any other person claiming through him.

2. u/s 21 of the Evidence Act an admission cannot be used as evidence in favour of the person making it or any person claiming under him except under some circumstances one of which is that it may be so used if it is relevant otherwise than as an admission. It is, therefore, necessary to consider if the statement above referred to is otherwise relevant and as such can be proved on behalf of the person making it. It is not seriously contended that the statement is relevant u/s 11, Evidence Act as it can hardly be said to be a ''fact'' within the meaning of that section. Nor is it maintained that it is admissible under any of the clauses of Section 32; though it appears that Makhan Roy is now dead. But it is attempted to make it evidence u/s 13 of the Evidence Act. It is said that the pottah was evidence of a transaction or a particular instance in which the right to the land or possession thereof was claimed or asserted by plaintiff''s lessor. It may not be a ''transaction'' as the pottah did not relate to the land in suit. Bansi Singh v. Mir Amir Ali 11 C.W.N. 703, but great stress is laid on Clause (b) of that section. That clause is in these words: "Particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from." This sub-section is divided into two parts: the first part deals with particular instances when the right was claimed; the second part speaks of particular instances when the exercise of the right was asserted. In the present case there was no assertion of an exercise of the right. Assertion, indicates some act or deed which may or may not follow a statement. It remains, therefore, to consider whether in the present case the right to the land in suit was ''claimed'' by the plaintiffs'' lessor by describing it as belonging to him in giving the boundaries of a contiguous plot of land let out under Ex. 4. The word ''claim'' has not been defined in the Act nor, so far as we are aware, has it received judicial interpretation. In the Oxford Dictionary the verb ''claim'' is said to mean "(1) to demand as one''s own or one''s due; to seek or ask for on the ground of right: (2) to assert or demand recognition of an alleged right, title, possession, attribute, acquirement or the like, to assert one''s, own to affirm one''s possession: sense (1) claims delivery of a thing, sense (2) the admission of an allegation." The word, therefore, denotes a demand or assertion in relation, to a thing or attribute as against or from some person Or persons, showing the existence of a right to it in the claimant. A bare statement may or may not be a claim according to the attending circumstances in which it is made. It may amount to a claim or be a mere statement of claim. There is a distinction, not too subtle,

between a statement of a claim and a claim, though in some circumstances a statement may amount to a claim; the latter is made with reference to a right in a thing which was at that time being dealt with or directly in contemplation, the former may be casual or made with reference to some other right or thing. The illustration u/s 13 afford some indication of the meaning to-be attached to the words used in the section. To give ''claim'' a wider meaning will practically neutralise the effect of Section 21 and make all statements wherein a right is stated to exist provable on behalf of the person making them, however, recent they may be. I make a note in my note-book that I have lent Rs. 1000 to A; thereafter.I bring a suit against A and put in my note-book to prove the entry I had made therein. If this evidence is admissible in my favour, 1 do not know what statement Section 21 seeks to exclude. In my judgment the statement made in Ex. 4 that the land to the west of the land demised under that pottah belonged to the plaintiff''s lessor is a mere recital and does not amount to a claim and cannot be proved, on behalf of the plaintiff and hence that document is inadmissible in evidence. In this connection attention may be drawn to the cases of Ramdahin Rai v. Dhanwanti Koer 15 Ind. Cas. 624 : 17 C.W.N. 1016 and Ramani Pershad Narain Singh v. Mohanth Adaiya Gossami 31 C. 380. In these cases similar statements were held inadmissible but without sufficient discussion of the law. In the case of Ramdahin Rai v. Dhanwanti Koer 15 Ind. Cas. 624 : 17 C.W.N. 1016, - even a statement made by the predecessor of the defendant while dealing with the property claimed, was held inadmissible against the plaintiff. It is not necessary to go so far but it shows the anxiety of the Court to up-hold the salutary principle of disallowing proof of statements in favour of a party making it or his representatives in interest and thus not permitting a party to take advantage of his own act.

3. The finding of the learned Subordinate Judge on oral evidence of possession adduced by the parties is vague and indefinite though it seems, from his comments on the defendant''s evidence, that he prefers the oral evidence on behalf of the plaintiffs. But, as I have stated, there is no documentary evidence of title on either side and as the learned Subordinate Judge has relied upon the pottah Ex. 4 in proof of plaintiffs'' possession, we cannot, in second appeal, say that excluding the pottah he would have arrived at the same conclusion on the question of possession. The learned Subordinate Judge has not also entered any finding on the issue of limitation. We are, therefore, constrained to allow the appeal and send the case back to the lower Appellate Court for a re-examination of the evidence on record excluding the pottah Ex. 4 from consideration and we order accordingly. The costs will abide the result.

Cuming, J.

4. I agree.