
(1869) 05 CAL CK 0040

Calcutta High Court

Case No: Special Appeal No. 1859 of 1868

Sukram and Others

APPELLANT

Vs

Kalakahar and Others

RESPONDENT

Date of Decision: May 12, 1869

Judgement

@JUDGMENTTAG-ORDER

Phear, J.

Think this case must be remanded to the Lower appellate-Court for re-trial on the merits. Some of the features presented by the suit are undoubtedly peculiar. If it were necessary for me to say, whether an adjudication of the case was come to by the Principal Sadder Ameen before his death, I should have some little hesitation in forming a judgment. But assuming for the moment that the entry in the Bahi Yaddasht or Memorandum Book is sufficient to indicate that the Principal Sadder-Ameen had finally disposed of the case, and judicially reversed the decision of the Court of first instance, though this would have the effect of voiding the judgment of the Deputy Commissioner for want of jurisdiction, I think that this judgment of the Principal Sadder Ameen is so defective from not being accompanied by any reasons, or any explanation of the grounds on which the decision of the first Court was reversed, that the case ought, if matters stood there only, to be remanded in order that these should be supplied. In other words, as the Principal Sadder Ameen is dead, it would have to be remanded for re-trial. On the other hand, if the Principal Sadder Ameen did not in fact before his death finally adjudicate the case before him, there is no doubt that the second hearing before the Deputy Commissioner was had with jurisdiction.

2. The Deputy Commissioner has dismissed the plaintiffs' suit upon the issue of limitation. In so doing, it appears to me that he has erred in law. The plaint has been read to us, and it is certainly, to my understanding, somewhat ambiguous. It may be that the plaintiffs therein allege that they are in possession of the land, and that their possession has been threatened by the action taken on the part of the defendants before the Survey Authorities; and on that ground the plaintiffs ask for a declaration of title. Or it may be

again that the plaintiff's seek to recover possession of the land from the defendants and ask to have the order of the Court accompanied by a declaration of title. These two causes of action are, in my opinion, very different.

3. I cannot gather from the judgment of the Deputy Commissioner, which of these he supposed to constitute the foundation of the plaintiffs' claim. If it was the first then according to the plaint, the cause of action accrued when the Survey Authorities in December 1865 demarcated the land in question as being in the possession of the defendants; and clearly on that cause of action, the suit would not be barred by lapse of time. If, on the other hand, the plaintiffs were suing to recover possession of the land, then no doubt the cause of action accrued when being out of possession they first became entitled to that possession; and it would be necessary, for the purpose of ascertaining whether the suit in that case was barred or not, to enquire how far back it was that the plaintiffs were last in possession.

4. The Deputy Commissioner seems, as I infer from his language, to have directed some attention to this latter point, and seems to come to the conclusion that the plaintiffs have not, in fact, been in possession for a considerable period. But the reasoning on which he places this conclusion, does not refer to any evidence of acts of possession, and therefore it seems to me, that in either alternative the judgment of the Deputy Commissioner upon the question whether or not the plaintiffs' suit is barred, is insufficient and ought to be set aside. With these views I think that the case ought to be remanded for retrial upon the evidence on the record: first, on the preliminary issue; and then, in the event of that being decided in favour of the plaintiffs, on the general merits of the case.

5. I would add that if the Deputy Commissioner is of opinion that substantially the plaintiffs' cause of action is this, namely, that they are in possession of the land, and that their possession is menaced by the defendants, and by the action of the Survey Authorities, he ought to dismiss the suit not on the preliminary issue but on the merits, if he finds from the evidence as a matter of fact that the plaintiffs are not in possession.

Jackson, J.

I concur. The case must be remanded for re-trial.