**(1868) 07 CAL CK 0023**

**Calcutta High Court**

**Case No:** Special Appeal No. 121 of 1868

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| Baikanthanath Kamar | | APPELLANT |
| | Vs | |
| Chandra Mohan Chowdhry | | RESPONDENT |

**Date of Decision:** July 21, 1868

**Judgement**

Bayley, J.

I am of opinion that this appeal ought to be dismissed with costs. The plaintiff sues for possession and mesne profits, on the ground of having been dispossessed from certain ancestral istemrari jummai lands. The defendant''s case is that he has not dispossessed the plaintiff; that the lands in dispute are not the plaintiff''s istemrari lands; that the plaintiff''s father once held the land, but being unwilling to pay an enhanced rent, he, the plaintiff''s father, gave them up by a deed of relinquishment. The first Court decreed the plaintiff''s suit. The defendant appealed, and the Lower Appellate Court has dismissed the defendant''s appeal, upon which he (the defendant) has appealed specially, urging before us only two grounds: firstly, that the Lower Appellate Court has erred in law in not requiring the plaintiff to prove an istemrari title, before giving a decree for possession, and that, until the plaintiff had proved such title, no proof should have been required from him (the defendant); and, secondly, that the Lower Appellate Court was wrong in takings part of the defendant''s statement as an admission against him, whereas, as a rule of law, the Lower Appellate Court should have taken the whole together.

2. In my opinion, these pleas are untenable, because it is clear from the written statement of the defendant, that the plaintiff''s father was in quiet possession of the tenure, whatever it might have been; and under the ordinary rules of inheritance, that tenure, as it existed in the father''s hands, would have descended to the son, had not the plaintiff''s father, as the defendant alleges, relinquished the lands. But it has been found as a fact by the Lower Appellate Court, that the plaintiff himself was in possession of the lands in dispute, and was dispossessed therefrom by the defendant; and that not only there was no sufficient title shown by the defendant, so as to justify the plaintiff''s possession being disturbed by defendant, but that the

whole of the title set up by the defendant was fraudulent and unaccompanied by any kind of possession whatever.

3. Under these circumstances, I hold that the plaintiff''s prayer for possession must be decreed, the defendant having shown no title to disturb that possession.

4. As to the second plea, I think that the contention of the defendant as to the doctrine of law as to admissions, which he wishes us to accept, and considers supported by the various cases cited by him, has no application whatever to the facts of the present case before us.

5. It is true that an admission which is qualified in its terms, must be ordinarily accepted as a whole, or not taken at all as evidence against a party, but when a party makes separate and distinct allegations without any qualification, the rule of law contended for does not apply. For instance, in the present case, the defendant, in his written statement, makes one clear and distinct allegation that the plaintiff''s father had possession, and that he (the defendant) had no possession whatever at that time. Then he makes another distinct and unqualified allegation, that the plaintiff''s father having relinquished the lands, he (the defendant) succeeded to the land. There are two such separate statements here that I cannot see why the one statement cannot be taken quite distinct from the other. I think the plea is untenable for these reasons. I, therefore, do not make any further remark on the legal doctrine as to admission. I would dismiss this special appeal, with costs.

Macpherson, J.

6. I wish to add a few words, because it is clear to me, from the repeated attempts which have lately been made before us to put a wholly wrong construction upon the judgment of the Full Bench, in the case of Pulin Behari Sen v. Watson and Go. (Case No. 76 of 1867, 31st January 1868), that, that judgment has been greatly misunderstood. In the judgment of the Chief Justice, Mr. Justice Bayley and myself, there occurs the following sentence: "If you read a man''s answer, you must take the whole admission together." This sentence has been repeatedly cited before us recently as laying down that no portion of a defendant''s written statement can, by any possibility, be read against him, without every portion of the statement from the beginning to the end being also read. To give such an effect to what we say, is to give it a far wider meaning than was ever intended. The context shows clearly enough what the true meaning is, and it is the only meaning which the passage properly bears. It is simply this: that if a man makes a qualified statement, you cannot use the statement against him apart from the qualification. But it is not laid down by us, and was never intended to be laid down, that if a man makes a series of independent and unqualified statements, these statements may not be used against him. While I still consider the judgment in Pulin Behari''s case to be perfectly right, I may state distinctly that that case, in my opinion, goes no further than to lay down that an unfair use is not to be made of a man''s written statement, by trying to

convert into an admission by him that which he never intended to be an admission. In the present instance, there are two distinct statements of facts made by the defendant. The first is that the plaintiff''s ancestor held the tenure, and was in possession of the lands in dispute up to a certain date. The second is that, on that date, the plaintiff''s ancestor relinquished the lands; and that, therefore, a settlement of the same lands was made with the defendant. There is, in what is said as to relinquishment and subsequent settlement with the defendant, no qualification whatever of the statement and admission by the defendant, that the plaintiff''s ancestor held the tenure for a certain time. The matter of re languishment, subsequently referred to, is not a qualification of the statement that the plaintiff''s ancestor once held the tenure, but is a perfectly fresh and distinct fact. There was, therefore, nothing wrong in law, and nothing contrary to the rule laid down in Pulin Behari''s case, in reading against the defendant so much of his written statement as stated that the plaintiff''s ancestor once held the tenure, and was in possession thereof until he relinquished it.