

(1878) 05 CAL CK 0010

Calcutta High Court

Case No: None

Kanye Lall Ruj and
Another

APPELLANT

Vs

Kangal Chandra Ruj

RESPONDENT

Date of Decision: May 10, 1878

Citation: (1879) ILR (Cal) 69

Hon'ble Judges: Tottenham, J; L.S. Jackson, J

Bench: Division Bench

Judgement

L.S. Jackson, J.

The plaintiff's sued in this case to recover possession of land which they claimed under two distinct titles--one being a title by sale and the other under a lease or usufructuary mortgage. The Court of first instance (Munsif) gave judgment for the plaintiffs for the whole of the lands claimed.

2. On appeal, the Judge held that the title under the deed of sale was satisfactorily made out, but that the evidence of the usufructuary mortgage altogether failed. So he cut down the decree and allowed the plaintiffs only to recover the land which fell under the deed of sale. When the officer of the Court came to draw out the decree, he found no means of ascertaining what the lands were that were covered by the decree, and consequently he was unable to specify the boundaries of the land of which the plaintiffs were to recover possession, and the decree accordingly provided that this should be ascertained in execution. Now, decrees of Appellate Courts, as well as decrees of Original Courts, ought to contain specifically the relief allowed by those Courts, and it was certainly necessary to determine by the decree what land, if any, the plaintiff's were to recover possession of. It would be necessary, therefore, to set aside the decree in order that this might be ascertained before judgment, But here arises a further question upon the defendant's plea of limitation, because inasmuch as the Judge has held that the plaintiffs are entitled to one portion of the land and not to the other, and especially as it appears that the evidence of

possession was not of uniform equal force in regard to all the land, the Judge, in determining what land passed under the kubala, would have to find whether the plaintiffs had been in possession of that particular land within twelve years before suit. The case will have to be remanded accordingly to the lower Appellate Court. The costs of this appeal will follow the result.