

(1878) 06 CAL CK 0023

Calcutta High Court

Case No: None

Koonjo Mohun Dass

APPELLANT

Vs

Nobo Coomar Shaha
and Others

RESPONDENT

Date of Decision: June 19, 1878

Citation: (1879) ILR (Cal) 216

Hon'ble Judges: R.C. Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Maclean, J.

This suit was instituted on behalf of Koonjo Mohun Dass, minor son of Ramkishore Dass, for joint possession of lands of a taluk, on the allegation that Ramkishore purchased, at a sale in execution of decree, the rights and interests of Jogendra Singh in the taluk, in 1270, and took possession by the usual method through the Court on 8th Magh 1271 (corresponding with 21st January 1865); but the first and second defendants, who are sons of Jogendra Singh, continued to hold possession by collecting the rents.

2. The first defendant, Chitra Singh, stated that his father's property was all sold under decrees for his debts; that he (defendant) recovered the share which the plaintiff claims, and subsequently sold it to one Nobo Coomar, who is now in possession.

3. The Munsif went fully into the various pleas raised before him, and gave the plaintiff a decree, but on appeal the Subordinate Judge reversed the Munsif's decree on the ground that Ramkishore Dass had never taken effective possession. He held that the mere setting up a bamboo on the land was not taking possession, and he supported his judgment by reference to a decision of this Court in Regular Appeal, No. 138 of 1875. This decision is not reported, but having referred to it, we find that it does bear out the Subordinate Judge's decision. But the Privy Council judgment in Gunga Gobind Mundul v. Bhoopal Chunder Biswas (19 W.R. 101) is

decidedly against the Subordinate Judge's view. It was there held that where property was delivered in the manner in which delivery is made under execution of decrees for land in the possession of ryots--viz., by beat of drum and the affixing of bamboos, and a receipt for the same was given, an end was put to limitation. It is immaterial whether actual possession was obtained or not. This judgment has been reviewed by Markby, J., in *Pearee Mohun Poddar v. Jugobundhoo Sen* (24 W.R. 418) after reference to the record of the case, and that learned Judge held, that the case reported from the Privy Council did not in reality decide that mere formal proceedings u/s 264, Act VIII of 1859, could be set up as proof of actual possession in answer to a plea of limitation set up against the decree-holder or purchaser in an execution-sale.

4. In the case before us, however, that is not the question; what has to be decided is, whether the judgment-debtor or his heirs were in possession at the time of the sale. If the plaintiff establishes that the judgment-debtor was in possession then, or within twelve years prior to the date of suit, she would be in time, otherwise she would not. But the Privy Council decision shows, that where a purchaser at auction takes possession in the manner which the law provides, his proceedings are valid, and we are therefore of opinion that the plaintiff's suit is not open to the objection that her husband, after his auction-purchase, did not take the necessary steps for delivery of the possession of the property in dispute to him by the Court.

5. The decree of the lower Appellate Court is, therefore, reversed, and the case remanded to that Court for disposal on the merits. Cost of this appeal will follow the result.