

(1878) 08 CAL CK 0011

Calcutta High Court

Case No: None

Brijnath Doss

APPELLANT

Vs

Juggernaut Doss

RESPONDENT

Date of Decision: Aug. 10, 1878

Citation: (1879) ILR (Cal) 322

Hon'ble Judges: Richard Garth, C.J; Markby, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The defendant now says that the jewellery did not belong to Chutterbhooj, but to his wife, and that the garden, although conveyed to Chutterbhooj, was bought with Kissen's money, or with the proceeds of the house 75, Burtola Street. But, if Chutterbhooj's wife allowed him to deal with the jewellery as his own, and if the defendant received it as being Chutterbhooj's property (as it is clear from the above account that he did), he cannot possibly resist the plaintiff's claim for it in this suit. And with regard to the title deeds of the garden, it is equally clear that, as between the plaintiff and defendant, the latter having received them from Chutterbhooj, cannot set up the title of a third party, especially as the plaintiff is the ostensible owner of the property.

2. The defendant then contends that, although as between him and the plaintiff the property in the title-deeds to the garden and in the jewels may be in the plaintiff, he has a right of lien upon them for the amount advanced with interest, and that he can set up that right as a valid defence to this suit. But we quite agree with the learned Judge in the Court below that the course, which the defendant has taken precludes him from setting up his lien as a defence. In order to avail himself of such a defence, he should have been in a position to show that at the commencement of this suit he was ready to give up the property upon being paid the amount of his lien: see *Boardman v. Sill* (1 Camp. 410) and *Dirks v. Richards* (4 M. & Gr. 574) : but it is clear that he was not ready to do this, because he has distinctly denied and

contested the plaintiff's title to the property.

3. Another objection, which perhaps we ought to notice, was taken by the defendant's Counsel to the jurisdiction of the Court to try this suit. He contended that, as the garden in Kakurgachee was situated out of the Calcutta jurisdiction, a suit for the title-deeds relating to it was a suit for land within the meaning of Section 11 of the Charter, and consequently that as no leave to bring the suit had been obtained u/s 12, the Court could not entertain it. We think, however, that there is nothing in this objection. A suit to recover title-deeds, although it may involve a question of title, is not a suit to obtain possession of land, or to deal in any way with the land itself, within the meaning of the Charter.

4. Then another objection, which was taken to the decree in the Court below, was that interest on the Rs. 1,862-6-0 had been allowed to the defendant only up to the date of the plaint, and that it ought to have been allowed up to the time when the debt was actually paid. But we think that in this respect also the learned Judge in the Court below was quite right.

5. The plaintiff says that he actually tendered the money due to the defendant before the suit, and if he could have proved this satisfactorily, the defendant would only have been entitled to interest up to the time of the tender. But as there is not sufficient proof of this, the defendant is entitled to interest up to the time when the plaintiff can show that he was ready to pay the defendant. Now the plaintiff distinctly offers in his plaint to pay the defendant all that was due up to that date, provided the property were given up, and if the defendant had accepted that offer, there would have been an end of the suit. But instead of doing this, the defendant denied the plaintiff's title, and said in effect, that however ready the plaintiff might be to pay the money on these terms, he (the defendant) would not receive it, but insisted on retaining the deed and jewels on the strength of an adverse title.

6. Under these circumstances we think the defendant is only entitled to interest up to the date of the plaint, and we, therefore, affirm the decree of the Court below, and dismiss this appeal with costs on scale No. 2.