

(1880) 02 CAL CK 0015

Calcutta High Court

Case No: None

Gudadhur Paul Chowdhry and
Others

APPELLANT

Vs

Bhyrub Chunder Bhattacharji
and Another

RESPONDENT

Date of Decision: Feb. 12, 1880

Citation: (1880) ILR (Cal) 918

Hon'ble Judges: Tottenham, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The grant was of great antiquity, and could not be regularly proved. It was therefore necessary to consider very carefully whether it came from proper custody, whether it had on any occasion seen the light before, and whether the previous circumstances were consistent with the fact of their having such grant; and upon the estimate of the evidence in this point of view, the Judge's judgment appears to us to be open to objection. The District Judge does not admit the reasons given by the Munsif for believing in the genuineness of this grant, and it is impossible to conceive that he could have approved of them. They appear, indeed, to be puerile. The defendants felt the necessity of showing that this document had seen the light before, and it was therefore stated that it had been produced on some former occasion in the Office of the Collector of Tipperah. On that the Judge says: It is, however, quite clear that it was filed in the Court of the Collector of Tipperah, and the legal presumption is in favour of its having been filed for a proper purpose. A certified copy was taken of it, and it is absurd to require the defendants to prove with what object it was filed, the legal presumption being in their favour." We are, quite unable to acquiesce in this view of the legal presumption. The presumption spoken of probably is, that which applies to proceedings of Courts, and even if we assume that the presumption applies equally to the proceedings of a Collector's office, it has no application whatever to the conduct of a person who puts in a

document in that office and causes a certified copy of it to be taken. It ought to appear, in order to serve the defendants' purpose, that this grant had been filed in the Collector's Office in order to the adjudication of some question of which the Collector had cognizance, and that had come under the cognizance of the Collector. Then, as to the conduct of the respondents, the Judge, in considering how far that was consistent, merely as evidence, with the possession of the grant, deals with it as if it had the effect of an estoppel, and finding that it did not work as an estoppel, he does not take any further notice of it. These appear to us to be serious errors in the decision, and considering that the Judge altogether disagreed with the finding of the Munsif as to the question of possession By cultivations for a period of thirty years or, at least, more than twelve years, it seems to us evident that the Judge had not correctly appreciated the importance of the inquiry on this point to the plaintiffs. We think, therefore, that the judgment of the lower Appellate Court should be set aside, and the case must go back to the lower Appellate Court for a proper trial, after careful consideration of the observations that I have made. The costs of this appeal will follow the result.