

(1898) 03 CAL CK 0022

Calcutta High Court

Case No: Appeal Under Sec. 15 of the Letters Patent No. 67 of 1897 in Appeal from
Appellate Decree No. 1247 of 1896

Baroda Sundari Deby

APPELLANT

Vs

Annoda Sundari Deby
and Another

RESPONDENT

Date of Decision: March 24, 1898

Final Decision: Dismissed

Judgement

Maclean, C.J.

I think this case falls within the principle laid down by this Court, in the case of Sheikh Asud Ali Khan, v. Sheikh Akbar Ali Khan 1 C.L.R. 364 (1877). The circumstances of a case may show that mere occupation and enjoyment by one co-share does not per se constitute an adverse possession as against the other co-sharer. In the present case all the joint property, except the small plot in question, was in the joint possession of the two sisters. Each received their share of the rents and profits. It may well be that, as a matter of sisterly affection, the Plaintiff allowed the Defendant sister to live on this little plot of land, but never intended to give up her title or right to it. There is no finding by the District Judge that the Defendant sister had held adversely to the Plaintiff who certainly had been in joint possession of all the rest of the property.

2. The decision of Mr. Justice Hill is right, and the appeal must be dismissed with costs.

Macpherson, J.

I am of the same opinion. It is conceded that the Defendant who is the Plaintiff's sister was in exclusive possession of the particular plot which is now claimed and that that plot forms only a part of the joint property which devolved upon the two sisters. It is found that the two sisters were in joint possession of the rest of the joint property. I do not think it can be inferred from that, that the exclusive possession of this particular plot was adverse to the other sister in the absence of any facts from

which an adverse possession can be inferred. The case seems to me to come within the principle of the case referred to by the Chief Justice.