

(1870) 01 CAL CK 0022

Calcutta High Court

Case No: Special Appeal No. 2328 of 1869

Jugal Kishor
Chuckerbutty

APPELLANT

Vs

Iswarchandra Das

RESPONDENT

Date of Decision: Jan. 19, 1870

Judgement

Phear, J.

This is a suit to obtain a declaration of the plaintiff's right of possession to certain land as against the defendant. There are, therefore, two elements in the cause of this suit: first, the possession of the plaintiff; and, secondly, his title as against the defendant to retain that possession. As far as we can judge from the written judgment of the Court below, that Court was of opinion that the plaintiff had failed to show any title to the land as against the defendant. The words of the Judge are:--"It appears that plaintiff has failed to produce his title-deed, the "potta, whereby to show that the lands in demand are included within the talook." Apparently some other inferior documentary evidence was put in for the purpose of supporting his title. But the Judge considered that even that evidence did not extend to the land in dispute. Under these circumstances, it seems that the First Court sent an Ameen into the Mofussil, as the Subordinate. Judge says, to ascertain the real facts of right and possession, and the boundary of the place; and the Judge remarks that the Moonsiff did well in doing so. I quite agree with the pleader who has argued this case on behalf of the appellant, that this proceeding is entirely unjustifiable. It really amounted to deputing the decision of this case to the Ameen. This Court has very many times, in reference to proceedings of this kind, expressed its opinion that section 180 of the CPC does not warrant a Civil Court in deputing its functions to an Ameen, whom it sends to the locality for the purpose of making a local investigation. All that it can charge the Ameen with, is to obtain such information with regard to the physical features of the place in dispute, the identification of land depicted in maps with the parcels which are subject of the suit, the identification of maps with one another by the aid of objects to be found on the land, and other matters of this kind which may be of use in, and auxiliary to, the proper trial of the suit by the Court before which it is pending. It is not very clear to my

mind, from the judgment of the lower appellate Court, to what extent that Court has relied upon the report which the Ameen, deputed in the way I have just mentioned, made to the Court. But I think I gather from it that the Subordinate Judge has found in that report the only evidence of title upon which the plaintiff has been allowed to succeed. In that report the Ameen states, that it appears from the copy of a kabuliat filed by one of defendants, whom he mentions, not the appellant, that a certain plot of land, a portion of which is in dispute appertains to the howl of the plaintiff; and upon this statement of the Ameen the lower appellate Court has based its judgment in favor of the plaintiff. The appellant objects to this statement being used in evidence against him, and I think that objection is good. It is obvious that this evidence, if evidence it can be called, is intrinsically of the weakest possible character, and if it had been adduced and tendered in open Court, the appellant would have been entitled to object to it, and to require that it should be excluded. A copy of a kabuliat simply filed by one of his co-defendants certainly ought not to have been used in evidence against him without his consent; still less, if I may say so, ought the statements of the Ameen sent to make a local investigation with reference to the effects of this copy of the kabuliat to have been treated as anything upon which the Civil Court could act. I think, therefore, that the decree of the lower Court, so far as it was adverse to the appellant, was made without legal materials to support it, and that this appeal ought to be decreed. The decree of the lower Court must be reversed, and the suit be dismissed as against the appellant. The appellant will have his costs in all the Courts.