

(1878) 02 CAL CK 0015

Calcutta High Court

Case No: None

Bemolasoondury
Chowdhrair and
Others

APPELLANT

Vs

Punchanun Chowdhry
and Others

RESPONDENT

Date of Decision: Feb. 19, 1878

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 13

Citation: (1878) ILR (Cal) 706

Hon'ble Judges: Morris, J; Kemp, J

Bench: Division Bench

Judgement

Kemp, J.

In appeal before us the first ground taken that there is no such putnee talook as alleged by defendants has been virtually abandoned, indeed, in the face of the evidence, it is clear that this talook was in existence prior to 1806, in which year Upendro Narayan Chowdhry, zemindar, assigned it by way of maintenance to his grandsons Permanand Chowdhry and Lukhi Chunder Chowdhry ancestors of the present defendant No. 1. Its existence was also established by the decree in the suit of Saroda Gobind Chowdhry and Ors. v. Komul Ghose. The second alleged ground of action is equally untenable, because any possession which may be given, or be said to be given, under the Butwara Law can have no force against third persons who were no parties to it.

2. By a butwara the rights of undertenure-holders are in no way affected, and though, as between shareholders, the assignment of specific lands to each share-bolder has binding effect, yet such assignment docs not of itself entitle the shareholder to obtain khas possession to the deprivation of the rights of the tenants on the land.

3. Another bar to the entertainment of this suit is the prior adjudication recognizing the title of the defendants in the suit of Saroda Gobind Chowdhry and Ors. v. Komul Ghose. In that suit the plaintiffs chose to intervene and the question of title as between them and the defendants was distinctly raised and determined. In the words of the judgment--"The plaintiffs have sufficiently proved by documentary and oral evidence that they have a right to, and are in possession of, an 8-anna share of turuf Ekdanta in virtue of a putnee talook." As, moreover, that suit was instituted two years after the conclusion of the butwara, any right to khas possession which the present plaintiffs considered themselves entitled to under the butwara should have been expressly set forth in that suit. They are, therefore, estopped under the ruling of the Full Bench in Gobind Chunder Koondoo v. Taruck Chunder Bose ILR Cal. 145 : 1 Cal. 30, from setting up this title now. This principle is also recognized in the new. Code of Civil Procedure, Section 13, expl. II. On the merits, we think that the possession of the defendants cannot be disturbed. (The learned fudge then proceeded to examine the evidence and continued.) When, therefore, it is apparent that this talook has been known and recognized by the ancestors of the parties in the present suit, and that the defendants or their ancestors have been in continuous possession of the lands appertaining to their share for upwards of seventy years, we think that it does not lie in the power of the plaintiffs to disturb this existing possession. If the plaintiffs could truthfully assert that they knew nothing of the existence of this talook in the possession of the defendants, and accepted the lands assigned to them under the butwara, because they were under the impression that the assets were calculated upon the rental payable by the ryots, which rental they were to receive, this would be good ground for applying to the Board of Revenue to set aside the butwara. But there is no jurisdiction in the Civil Court to disturb a butwara which has been effected by the properly-constituted authorities acting in accordance with the law.

4. The suit was, therefore, rightly dismissed by the Subordinate Judge.

5. Accordingly we affirm the judgment of the Subordinate Judge and dismiss this appeal with costs.