

Jogendra Nath Bhunya Vs Mohindra Ghora and Others

Court: Calcutta High Court

Date of Decision: June 13, 1918

Citation: AIR 1919 Cal 964 : 47 Ind. Cas. 973

Hon'ble Judges: Syed Shamsul Huda, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.

This is an appeal by the plaintiff against the decision of the learned Subordinate Judge of Midnapur, dated the 20th November

1916, affirming the decision of the Munsif of Tamluk. The plaintiff brought the suit for possession of two plots of land on establishment of his title

by purchase. Both the Courts below have dismissed the "Suit. It appears that one Krishna Majhi had two wives Sundari and Putti Dasi. One of the

two plots sued for Krishna Majhi purchased in the name of Sundari from one Purnima Dasi. The other plot Krishna Majhi apparently acquired

himself. Sundari predeceased Krishna Majhi. On Krishna Majhi's death, he left him surviving Putti Dasi as his heiress and a sister whose son the

defendant No. 3 is the vendor to the plaintiff. On the 4th June 1903, the defendant No. 3 relinquished in favour of Putti Dasi both the plots now

sued for for a consideration of the defendant No. 3 receiving relinquishment from Putti Dasi of all her interest in the other plots. Subsequently, Putti

Dasi sold one half of plot No. 2 to her brother, the defendant No. 1. Then the sons of Purnima in the year 1911 brought a suit against Putti Dasi

and her brother, the defendant No. 1, to recover plot No. 2. That suit was compromised on the defendant No. 1 paying a sum of money to the

son of Purnima Dasi for relinquishing all their claims. In 1913, Putti Dasi died and the defendant No. 1 succeeded to the property. In February.

1914, the defendant No. 3 sold to the plaintiff. The learned Judge of the lower Appellate Court has held that it is a case of estoppel and that the

defendant No. 3 having taken the benefit of the deed of the 4th June 1903, he or any person claiming through him cannot now set up that the

document is not binding on him and did not operate on the plots relinquished in favour of Putti Dasi. It seems to me, speaking generally, that he is

quite right. The defendant No. 3, having had the benefit and having retained the benefit of this document of the 4th June 1903, cannot now turn

round and say that he is not bound by its terms.

2. A supplemental point was attempted to be made with regard to plot No. 2, and that was that the title of the defendant No. 1 arose under the

solenama with the sons of Purnima Dasi and that he did not claim through the deed of the 4th June 1903. Although the compromise might have

been by way of confirmation, there is nothing to suggest that the parties intended to give up the rights that they had under and by virtue of the deed

of the 4th June 1903. I think the learned Judge of the lower Appellate Court came to a correct conclusion on the facts found in the case. The

present appeal, therefore, fails and must be dismissed with costs.

Syed Shamsul Huda, J.

3. I agree.