

(1919) 01 CAL CK 0065

Calcutta High Court

Case No: None

Lall Meah

APPELLANT

Vs

Rajani Kanta Chatterji
and Others

RESPONDENT

Date of Decision: Jan. 31, 1919

Acts Referred:

- Specific Relief Act, 1877 - Section 42

Citation: AIR 1919 Cal 64 : 50 Ind. Cas. 311

Hon'ble Judges: Walmsley, J; Beachcroft, J

Bench: Division Bench

Judgement

Beachcroft, J.

This appeal is by the first defendant. The plaintiffs alleged that they were the owners of a Jalkar Mehal, that a certain spot in a river known as the Dhonogoda river was included in that Jalkar and that the defendants caught fish there and dispossessed them thereby. They, therefore, asked for a declaration that this portion of the river was included in that Jalkar, for possession and also for damages for the fish taken. The Munsif found against the plaintiffs. The learned Judge found in their favour. He found that the spot which was the subject-matter of the dispute was included within the plaintiffs' Jalkar. Consequently, he gave them a declaratory decree. He thought, however, that the plaintiffs were not entitled to damages on account of the fish taken because he was not prepared to accept the evidence as regards this incident. In this appeal, two points have been urged on behalf of the appellant. First, that the learned Judge was wrong in using a map which had been prepared by an Amin in a suit in 1855 without that map having been proved in the present suit as being correct and, secondly, that on the finding that as the incidents regarding the taking of fish and dispossession by the defendants had not been proved, the Court was wrong in giving the plaintiffs a declaratory decree.

2. The first point, to my mind, has no substance. It seems to me that the learned Judge has only referred to this map by reason of the reference to it in the judgment of 1865. The map may not have been made a part of the decree in that suit, but the learned Judge only uses it from the point of view that the judgment of 1865 was written with reference to it. It seems to me that this objection is untenable.

3. As regards the second ground urged, no doubt the learned Judge is not satisfied as regards the incident of taking of fish by the defendants. I do not think, however, that that disentitles the plaintiffs to a declaratory decree. u/s 42 of the Specific Relief Act, a person entitled to any legal character may institute a suit against any person denying or interested to deny his title and the Court may make a declaration that he is so entitled. In the present case, it is quite clear that this Jalkar has been a matter of dispute for at least 50 years and it is evidently a constant source of friction between the parties. Even now the defendant No. 1 says in his written statement that the plaintiffs were never in possession but that he is in possession and is in adverse possession for over 12 years. In that view, there is no substance in this argument.

4. The appeal, therefore, fails and is dismissed.

5. There is a Cross objection that the lower Appellate Court ought to have given the plaintiffs a decree for possession in addition to the declaratory decree. I am not quite sure from the language of the learned Judge whether or not he intends to find that the plaintiffs have been dispossessed. But this much is clear that the plaintiffs in their plaint say that they have been dispossessed and the defendant in his written statement says that he is in possession. It is obviously common ground that at the time of the suit the plaintiffs were out of possession. Therefore, a decree for possession ought to follow the declaratory decree. The cross-objection is allowed and there will be a decree for possession.

6. The plaintiffs-respondents will be entitled to their costs in the appeal and the cross-objection.

Walmsley, J.

7. I agree.