

(1894) 05 CAL CK 0008
In the Calcutta High Court

Ahmud Bepari and Another

APPELLANT

Vs

Tohi Mahomed and Others

RESPONDENT

Date of Decision : 07-05-1894

Acts Referred:

Registration Act, 1877 — Section 17(d)

Citation : 4 Ind. Cas. 511

Hon'ble Judges : Trevelyan, J; Banerjee, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for recovery of possession of 6 kanis, of chur land which the plaintiffs-appellants allege consist of 1 1/2 kanis of land originally settled with them by the proprietor on the 25th Aghran 1293 and of alluvial accretions to the same. They say that they had been in possession of this land down to 1297; that they were dispossessed by the defendants; that they brought a suit against the defendants under Section 9 of the Specific Relief Act; and that that suit having been dismissed they are obliged to bring the present suit to establish their right to the land.

2. The defendants Nos. 3 and 4 who contested the suit, denied the plaintiffs' right and alleged that the land appertained to their jote.

3. The first Court gave the plaintiffs a decree; but on appeal by the defendants the lower appellate Court has reversed that decree, holding that the plaintiffs have failed to make out their title to the 1 1/2 kanis of land originally leased to them, as the dastak, Ex. 1, which is the basis of their title is inadmissible for want of registration, and that the plaintiffs were not entitled to claim any accretion, as they had no right of occupancy in the 1 1/2 kanis of land the same being chur land.

4. In second appeal it is contended that the lower appellate Court was wrong in holding that the dastak was inadmissible for want of registration, and that the plaintiffs were not entitled to claim the accretion to the 1 1/2 kanis of land originally

leased to them.

5. We are of opinion that the first contention ought to prevail. The dastak merely allows the plaintiffs to take possession of the land and to cultivate it; but it is not, we think, a lease for any term exceeding one year, or a lease from year to year or a lease reserving a yearly rent, within the meaning of Clause (d) of Section 17 of the Registration Act; that being so, the document was admissible in evidence, and upon the basis of that the plaintiffs have shown that they were tenants and had some right in the land let out.

6. The next question is, what right have they in that land? Their occupation of the land commenced only in 1293, that is, less than 12 years ago. Therefore, they could not, by reason of their occupation of the land, have acquired any right of occupancy in the same. It was contended that as they were settled raiyats of the village having rights of occupancy in other lands in that village they were entitled to claim the same right in respect of this land. But these 1 1/2 kanis of land are admitted in the plaint to be chur land; and u/s 180, Sub-section (1), Clause (b) of the Bengal Tenancy Act the plaintiffs cannot be said to have acquired any right of occupancy in the same, their occupation of the land not having extended over twelve years. That being so, they cannot be said to have acquired any right of occupancy in the additional land that is said to have formed as an accretion to the land originally let out. But, there is nothing to prevent the plaintiffs from claiming the newly formed land as an accretion to their holding in their right as non-occupancy raiyats. It has been held by this Court in the case of Bhagabut Prasad Singh v. Durgbijoy Singh 16 W.R. 95: 8 B.L.R. 73 that even a tenant-at-will can claim the benefit of Clause 1, Section 4 of Regulation XI of 1825; and that decision has been recently approved and followed by a Full Bench of this Court in the case of Gourhari Kaiburto v. Bhola Kaiburto 21 C.233. But then it is to be observed that the lower appellate Court has not decided the question whether the portion of the land in suit, that is in excess of the 1 1/2 kanis originally let out is really an accretion to that area. It is necessary, therefore, to send the case back to the lower appellate Court for the determination of that question. If the lower appellate Court finds that the land that is claimed as an accretion to the area originally let out, did form as a gradual accretion to it, the plaintiffs will be entitled to a decree for possession of the same in their right as non-occupancy raiyats. If the fact is found otherwise, the plaintiffs' claim to the additional quantity of land as an accretion must be dismissed.

7. The result then is that the plaintiffs are entitled to a decree for the 1 1/2 kanis let out to them to be held by them as non-occupancy raiyats; and the case must be remanded to the lower appellate Court with reference to the remaining quantity of 4 1/2 kanis for the determination of the question stated above and for a decision upon that question in accordance with the directions contained in this judgment.

8. The costs of this appeal will abide the result of the remand.