
(1909) 02 CAL CK 0042
In the Calcutta High Court

Baikuntha Nath Satpati

APPELLANT

Vs

Narendra Narain Maiti and Others
 Guru Prasad Das
and Another Vs Narendra Narain Maity and Another

RESPONDENT

Date of Decision : 03-02-1909

Acts Referred:

Citation : (1909) 02 CAL CK 0042

Judgement

1. These appeals are brought by the plaintiff and by defendants 2 and 3 respectively against the decision of the District Judge.

2. The suit was for declaration of title and possession, the plaintiff basing his title upon a conveyance from Defendants 2 and 3, while defendant No. 1, who is alleged to have dispossessed the plaintiff, claims under a conveyance from the vendors of defendants 2 and 3. The land in question belonged to Banomali and Roghu Jana; they executed a conveyance in favour of defendants 2 and 3 on August 6th 1893. On May 25th 1903, defendants 2 and 3 sold to the plaintiff, who alleges that he was dispossessed in December 1903, by defendant No. 1.

3. Defendant No. 1 claimed the property under a conveyance from Banomali and Raghu Jana dated July 17th 1903, and alleged that the conveyance of August 1893 in favour of defendants 2 and 3 was merely a paper transaction.

4. The Munsiff holding that defendant 1 had failed to prove that that sale was a benami transaction gave judgment for the plaintiff against defendant No. 1 and dismissed the suit as against defendants 2 and 3.

5. On appeal the learned Judge came to the conclusion that plaintiff was never in effectual possession for any length of time after his purchase and that defendant 1 had been in peaceable possession since July, that defendants Nos. 2 and 3 have not been in effectual possession from 1893 to 1903 but possession was with Banomali and Raghu. On this he held that the plaintiff was not entitled to possession against defendant 1, but was entitled to recover compensation from defendants 2 and 3 his vendors. He accordingly remanded the case to the lower

Court for a finding on the questions whether the plaintiff had paid defendants 2 and 3 the purchase money for the land, and what sum the defendants 2 and 3 were liable to pay the plaintiff as principal and damages under the terms of the kabala?

6. The Munsiff answered the first question in the affirmative. On the 2nd question, after expressing his opinion that the clause in the conveyance did not impose on defendants 2 and 3 a liability to pay compensation in the event of a dispossession by 3rd persons, he finds, in accordance with direction of the appellate Court, that the compensation will amount to the purchase money plus 12 per cent.

7. The Lower Appellate Court on these findings gave judgment setting aside the decree in favour of the plaintiff and directing that he should get a decree as against defendants 2 and 3 for the amount of the purchase money with interest at 12 per cent.

8. Against this decree the plaintiff and defendants 2 and 3 appeal.

9. The plaintiff's contention is, that as it has not been found that the conveyance from Banomali and Raghu Jana in favour of defendants 2 and 3 is a sham transaction then by that conveyance the title to the lands in question passed from Banomali and Raghu Jana to defendants 2 and 3 in 1893 and then passed to him by his purchase in 1903. Banomali and Raghu Jana, therefore, had no title in July 1903, to convey to defendant No. 1. The plaintiff is, therefore, entitled to possession.

10. The respondents in answer say that neither the plaintiff, nor any one under whom he claims are shown to have been in possession at any time during the 12 years next before July 1907, when the suit was brought, so any title which might have passed from Banomali and Raghu Jana in 1893 has become barred by limitation.

11. The appellants in the other appeal say that the condition in the conveyance only rendered them liable to indemnify their vendees against dispossession by some one claiming under the vendors and did not render them liable to guarantee the purchasers against dispossession by some one claiming under a title paramount.

12. The latter contention is, I think, the correct one; the condition in the conveyance runs in these terms: "That if you or your heir or successor be dispossessed from the said land, and Jama, wholly or in part, by us, our heirs or representatives, at any time on any ground, we and our heirs remain bound to refund to you the proportionate amount of consideration money and damages and costs," and those terms in my opinion only impose on the vendors a responsibility for those claiming under them. As to the other appeal the findings of fact in the Lower Appellate Court are not as definite as they might have been. The finding as to whether the purchase by defendants 2 and 3 was benami or not

is not precise, but the District Judge, while holding that the possession of the property remained with Banomali and Raghu Jana after the sale to defendants 2 and 3, has not found that the transaction was a sham. The 12 years, within which the plaintiff or those through whom he claims must have been in possession, began to run on July 27th, 1895. There is no express finding as to whether they were in possession, only a finding that the plaintiff never was in effectual possession for any length of time after his purchase. The onus lay upon the plaintiff to prove that he was dispossessed within the 12 years; this, it appears, he did not succeed in doing and, if that is so, the judgment of the Lower Appellate Court dismissing his suit must stand.

13. There is also another ground on which the suit must fail. The plaintiff has joined a claim for possession of land against defendant 1 with a claim for damages against defendants 2 and 3 and has obtained, before the Munsiff, judgment in his favour on the first claim and against him on the second claim, while the position with regard to the two claims has been reversed in the Lower Appellate Court. The causes of action on which the two claims are based are conflicting and hostile and it is clear from the result of the trial in the two Courts that they could not be conveniently tried together in one suit. The suit is, therefore, bad for misjoinder of causes of action and as against defendants 2 and 3 must fail.

14. The result is that the appeal of the plaintiff against defendant No. 1 must be dismissed and the appeal of the defendants 2 and 3 against the judgment of the Lower Appellate Court in favour of the plaintiff must be allowed with costs.