

(1916) 11 AHC CK 0030
In the Allahabad High Court

Bijai Narain Singh and Others

APPELLANT

Vs

Sri Maharaja Parbhu Narain Singh

RESPONDENT

Date of Decision : 02-11-1916

Acts Referred:

Citation : AIR 1917 All 102 : 37 Ind. Cas. 395

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—The facts of the case out of which this appeal arose are stated very clearly in the elaborate and well-reasoned judgment of the learned District Judge. I need not detail them. It is sufficient to note the points put forward by the learned Counsel for the appellants. These points are that the contents of the kabuliyat dated the 4th of September 1879 are not admissible in evidence, that even if they are admissible in evidence they do not prove that Bishesar Singh was a tenant of the plaintiff-respondent and that in any circumstance after the expiration of the term fixed by the kabuliyat, Bishesar Singh and his successors became trespassers whose adverse possession has ripened into full proprietorship after a lapse of more than twelve consecutive years. There was a fourth ground taken in appeal, but that was abandoned in argument. As to the admissibility in evidence of the contents of the kabuliyat the learned Counsel has taken me through a series of decisions of this Court with reference to this point. These are Nand Lal v. Hanuman Das 26 A. 368 : 1 A. L.J. 96 : A. W. N.(1904) 46 Gir v. Jogendro Nath Ghose 27 A. 136 : A. W. N. (1901) 189 : 1 A. L.J. 576. Sikandar v. Bahadur 2 A. L.J. 208 : A. W. N. (1905) 48 : 27 A. 462. There is also a decision on a similar point in Beni v. Puran Das 27 A. 190 : A. W. N. (1904) 212. It would appear that the correctness of the view taken in the first three decisions which I have mentioned was challenged and that the point was argued before a Full Bench in the case of Sheo Karan Singh v. Parbhu Narain Singh 2 Ind. Cas. 211 : 31 A. 276 : 6 A. L.J. 167 : 5 M.L.T. 347. The Full Bench did not,

however, determine the point and so far as I am concerned, I am bound by the decisions in question. These decisions do not, however, in my opinion, assist the case for the appellants. They nowhere state that the contents of a registered kabuliyat cannot be admitted in evidence to prove the obligations undertaken by the executant or to prove the relationship between the parties. What these decisions simply lay down is that where there is a kabuliyat but no lease, the executant of the kabuliyat cannot utilise the contents of that document against the owner of the land for his own benefit. But the owner of the land can clearly utilise the contents of the kabuliyat to prove what the executant of the kabuliyat has undertaken to do. The plaintiff-respondent is, therefore, entitled to show from the contents of this kabuliyat that Bishesar Singh not only asserted no title contrary to that of the plaintiff-respondent, but that Bishesar Singh admitted himself to be a tenant under the terms of this document itself. He is entitled to utilise it in this way, and an examination of the contents can only show that Bishesar Singh recognised the plaintiff-respondent as holding a superior title in the land in question and agreed to pay rent for that land by abstaining to collect from the plaintiff-respondent an equal amount which the latter owed him in another connection. The period of this kabuliyat expired in 1295 Fasli. The learned Counsel, for the appellants, argues that when the period of the kabuliyat expired Bishesar Singh must be taken to have been in adverse possession. How does the case stand? Bishesar Singh was certainly not in adverse possession so long as the kabuliyat was in force. When the period of the kabuliyat expired he continued to retain physical possession as he retained it before. He did not pay rent to the plaintiff-respondent; he never had done so; but he is not shown to have collected from the plaintiff-respondent the amount the plaintiff owed to him. Therefore, it can only be taken that the rent due with regard to this land was set off between the parties against the amount due from the plaintiff-respondent. In these circumstances can any question of adverse possession arise, specially when the relationship between the parties is considered? The plaintiff-respondent was first entitled to the revenue accruing from this land. Bishesar was the zemindar. The plaintiff-respondent, however, had purchased the rights of a tenant at fixed rates. After the recognition of the plaintiff-respondent as a Ruling Chief the right to receive the revenue vested in the British Government. The plaintiff-respondent became the zemindar, the appellants became under-proprietors and the plaintiff-respondent continued to be recognised as a tenant at fixed rate. In these circumstances, how can there be adverse possession? It may also be taken that when possession is non-adverse in its inception, it is necessary to prove some overt act of adverse possession before adverse possession can be deemed to exist. Here there is no overt act. I have been referred by the learned Counsel for the appellants as an authority for a view to the contrary, for which he argued with great skill, to the decision in *Pusa Mal v. Makdum Bakhsh* 3 Ind. Cas. 566 : 31 A. 514 : 6 A. L.J. 584. But not only were the facts of that case considerably different from the facts of the present case, but that decision was passed before the pronouncement of their Lordships of the Privy Council in *Musammatt Bilas Kunwar*. Desraj Ranjit Singh 30

Ind. Cas. 299 : 37 A. 557 : 19 C.W.N. 1207 : 29 M. L.J. 335: 2 L. W. 830 : 18 M.L.T. 218 : 13 A. L.J. 991 : 17 Bom. L.R. 1008 : 22 C. L.J. 516 : (1915) M. W. N. 757 : 42 I.A. 202. which was followed by a Bench of this Court in the later case of Ganpat Rai v. Multan 33 Ind. Cas. 97 : 14 A. L.J. 263: 38 A. 226. I, therefore, hold that the appellants have acquired no title by adverse possession. This disposes of all the points raised. The appeals fail and are dismissed with costs, including fees on the higher scale.