
(1912) 01 CAL CK 0036
In the Calcutta High Court

Birendra Kishore Manikya

APPELLANT

Vs

Roshan Ali

RESPONDENT

Date of Decision : 04-01-1912

Acts Referred:

Citation : (1912) ILR (Cal) 453

Hon'ble Judges : D. Chatterjee, J;Caspersz, J

Bench : Division Bench

Judgement

Caspersz, J.—This is one of the numerous appeals involving the same question, the right claimed by the plaintiff, the Maharaja of Hill Tippera, to assess the niskar (rent-free) tanks situated in his chakla Roshanabad. We have heard the arguments in this appeal and in appeal from Appellate decree Nos. 1270, 1963 and 2515 of 1910, which may be regarded as test cases. The plaintiff's suits have been dismissed in appeal from Appellate decree Nos. 1270 and 1963 of 1910, in which judgment has just been delivered, and this appeal also must fail, The Subordinate Judge has held the suit to be barred, because it was brought more than twelve years after the defendant's assertion of adverse title before the Settlement Officer on the 26th February 1896. In the opinions already expressed the plaintiff's suit is not maintainable, because his right to assess rent on the niskar tanks has not accrued. In the present case (which corresponds with suit No. 399 of 1908 of the first Court) no sanad chiti was produced or set up by the defendant; their claim was to hold the tank rent-free in virtue of their ancestral title. In so far as that claim is concerned, it has been found to be hostile, and it must be deemed hostile so long as the tank is used as such. The appeal is dismissed, but without costs, as the respondent does not appear.

D. Chatterjee, J.

2. In this case the defendant pleaded old ancestral rent-free title and also title by adverse possession. The defendant No. 1, however, stated in his deposition that his ancestor had got this lakhirai on payment of gun, which is translated as the capitalized value of probable rent; the Courts below have held that the payment

of gun had not been made out, but that the plea of payment implies that the land was at one time mal, That it was once the mal, of the plaintiff is not denied; and if the payment of gun is not proved, the land is still mal, unless any title by adverse possession or otherwise has arisen in favour of the defendant. The finding is that the defendant and his predecessors have been in possession without paying any rent for over twelve years: that by itself is not sufficient for basing a valid title in bar of the plaintiff's suit, as there is no finding as to who dug the tank and when and under whose order. There is, however, the settlement khatyan showing that about the 26th February 1896 the defendant No. 1 claimed the land as rent-free, and the plaintiffs agent denied the claim. There was thus a clear claim of niskar title unqualified by reference to any document, and a clear denial of the same by the plaintiff's agent. A complete hostile right was claimed to the knowledge of the plaintiff, and no suit was brought until more than twelve years after. I think that this suit, as framed, is clearly barred by limitation and has been rightly dismissed. I agree, therefore, in dismissing the appeal without costs.