

(1899) 09 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 1063 of 1898

Brojo Kanto Das and others

APPELLANT

Vs

Tufaun Das and others

RESPONDENT

Date of Decision : 01-09-1899

Acts Referred:

Citation : (1899) 09 CAL CK 0003

Judgement

1. The Plaintiffs who are residents of the Bhutan Duars say that they are the two youngest sons of Mundura Das, although their position as such is denied. Their case is that their father died possessed of a 4-anna share in a jote; that during the minority of the Plaintiffs their four elder brothers sold that jote to the first three Defendants in fraud of the rights of the Plaintiffs; and that the Defendants knowing of the Plaintiffs' interest in the jote and acting in collusion with the Plaintiffs' brothers took possession of it under this alleged purchase. The lower Appellate Court, without going into the merits, dismissed the case on the ground that it was not cognizable having regard to the provisions of Act XVI of 1869 and Act VII of 1895 by which Act XVI was repealed.

2. The question which arises before us is whether that decision is right, the Munsif having gone into the case and decided it in the Plaintiffs' favour.

3. Act XVI of 1869 excluded the Civil Courts from the cognizance of suits relating to immoveable property, revenue and rent in the Bhutan Duars, and provided that the jurisdiction which the Civil Courts hitherto exercised in respect of suits and other matters connected with immoveable property, revenue and rent should be exercised by officers to be appointed by the Lieutenant-Governor of Bengal. In the schedule to the Act certain rules were laid down which were to have the force of law. Those rules in substance provided that the officer, appointed by the Local Government, shall prepare a Record of Rights for Revenue Survey Circuits or other convenient tract of country after giving notice in such tracts calling on all interested in the suits and matters mentioned in sec. 2 of the Act, that is to say, suits and other matters connected with immoveable property, revenue and rent,

to come forward and advance their claim and protect their interests before that officer. There was to be a publication of a draft Record of Rights and within one month from the date of publication any one aggrieved by any entry in the record might come forward and complain, and the officer was bound to try any questions which were in dispute. The rules further provided for an appeal to the Commissioner of the Division against any decision of the Settlement Officer. After the record had been finally revised and amended in accordance with the orders passed by the officer or the Commissioner of the Division under the rules it was to be confirmed by order of the Commissioner of the Division. Rule XII then enacted that "from the date of the publication of such confirmation the said record shall not be varied or altered otherwise than by an order of the Lieutenant-Governor under Rule X, and such record shall be conclusive evidence as to any right, interest or other matter which may be entered on it in accordance with the provisions of these rules." Under Rule X the Lieutenant-Governor could alter, vary or annul any decision or order, provided an application was made to him within one month from the date of the notifications confirming the record.

4. It was argued for the Respondent that the CPC was not in force in the Bhutan Duars. We think there is no foundation for that contention. It is a contention which was not raised in either of the lower Courts. The CPC was extended by notification to Jalpaiguri which is one of the scheduled districts, and, in the absence of any proof or any allegation to the contrary, we must take it that the Bhutan Duars are a part of the Jalpaiguri district. The notification did not have the effect of introducing the CPC into the Bhutan Duars because Act XVI of 1869 which was then in force excluded that jurisdiction in express terms. But Act XVI of 1869 was repealed without any qualification by Act VII of 1895, and the repeal of that Act left the CPC to be administered in the Bhutan Duars and other parts of the district.

5. The Appellant contends that they are not precluded from bringing this suit by Rule 12 to which we have referred or by the saving clause of Act VII of 1895 which protects the rights acquired under the rules. It seems to us that if the Plaintiffs' allegations are correct, they are not precluded. We do not know in what way the record was prepared or what was contained in it, but we think that the entry in the record which is to be conclusive evidence of any right, interest or other matter must be an entry which has been honestly and fairly obtained. If the Plaintiffs' case is true, they were minors, persons unable to come forward in accordance with the notification, which the officer preparing the Record of Rights was bound to issue, and protect their own interests. The persons who ought to have protected those interests were persons acting dishonestly to them; and if the purchaser Defendants Nos. 1 to 3 knowing of that and acting in collusion with the other Defendants in fraud of the minors' rights got an entry made in the Record of Rights by suppression of the true facts, we think that the minors are not precluded by the entry from obtaining relief against the Defendants.

6. We set aside the order of the lower Appellate Court and send the case back in

order that the appeal may be heard and disposed of, all necessary questions being decided. The Appellants are entitled to their costs of this appeal.