

(1912) 11 AHC CK 0011
In the Allahabad High Court

Deokinandan Pershad and Others

APPELLANT

Vs

Bindeshwari Parshad and Others

RESPONDENT

Date of Decision : 14-11-1912

Acts Referred:

Citation : 17 Ind. Cas. 523

Hon'ble Judges : Chamier, J

Bench : Single Bench

Judgement

Chamier, J.—This was a suit for declaration of title to the sites of four houses in Mohalla Nawabganj in the town of Ghazipur and for three years' arrears of parjawat, a kind of ground-rent. The plaint was amended by the addition of a prayer for "proprietary possession" of the land as it was feared that the claim for a declaration of title might be held to be barred by limitation. The Courts below have agreed in giving the plaintiffs a decree for proprietary possession and for the arrears of parjawat.

2. The grounds of appeal are many, but two points only have been pressed before me, namely, that the claim to a decree for proprietary possession is not maintainable and that the whole claim is barred by the long continued adverse possession of the defendant.

3. It has been found that the plaintiffs are the proprietors of the land and that they or rather their predecessors have received parjawat from the holders for the time being of the houses, but the parjawat has not been paid for a great many years. One of the Munsifs before whom this case came says that the parjawat has not been paid for the last 20 or 30 years. The Subordinate Judge says it has not been paid for many years. As far as I can see, there is no clear evidence of the payment of the parjawat during the last 50 years except possibly in the plaintiffs' account books which the Subordinate Judge has accepted but which have not been translated or referred to by Counsel in this Court. It has been held in many cases that mere non-payment of rent by a tenant is generally insufficient to show that the tenant has acquired proprietary title against his

zemindar and that a denial of the landlord's title must be shown. Sheo Dyal Singh v. Ganga 14 Ind. Cas. 324 and Anroop Misr v. Kedar Pande 15 Ind. Cas. 338 are recent cases on the point. But I apprehend that non-payment of rent, if proved, to have continued for a very long period might give ground for the inference that the landlord had been ousted or had transferred his right to the tenant just as in the case of tenants-in-common, exclusive possession of one tenant in-common for a very long period may furnish ground for the inference that the others have been ousted by him or have transferred their rights to him. See Fisher & Taylor v. Prosser (1774) 1 C 217 referred to in Gangadhar v. Parasharam 29 B. 300 : LR 7 Bom 252. In the present case, I do not think that such an inference should be drawn from the non-payment of the parjawat. The amount of the parjawat is very small only 2 pice per mensem for each house. Probably the landlords did not care to collect it regularly and by degrees gave up collecting it altogether.

4. On the whole, I am of opinion that the decisions of the Courts below are right upon this point and that it should not be inferred from the facts that the defendants have been in adverse possession of the sites of their houses. But from this it follows that the plaintiffs have not been ousted from such possession as they are entitled to and should not be given a decree for possession. The plaintiffs will have a decree for the parjawat, the rest of the claim is dismissed.

5. The parties will pay their own costs throughout.