

(1889) 12 CAL CK 0005
In the Calcutta High Court

Durga Sunduri Dasi and Durga Sunduri Debi	APPELLANT
Vs	
Rakhal Das Addy, Executor to the Estate of the late Gobind Chunder Addy	RESPONDENT

Date of Decision : 20-12-1889

Acts Referred:

Citation : (1890) ILR (Cal) 459

Hon'ble Judges : W. Comer Petheram, C.J.;Tottenham, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—Now comes the other question, and of course that is the important question in the case, namely, whether the plaintiff who has purchased this taluk, upon which this hat has been held for so many years, is entitled to an injunction to restrain the owners of the neighbouring land from holding a market upon it.

2. The argument for the plaintiff is that this is an ancient market which was at some time or other resumed by the Government, and that the Government had since re-settled the land with the predecessor in title of the plaintiff; and that inasmuch as upon the re-settlement of the land the amount of the revenue which had to be paid for it to the Government was arrived at by taking into calculation the profits of the market (the profits which arose from the tolls properly so called), that is to say, a share of the articles sold in the market taken for the privilege of selling them in the market, therefore that must be taken as a grant from the Crown of a right to hold the market and take tolls in it, and if it amounts to that, such a grant must imply a, monopoly which will enable the holder of such a grant to restrain other persons from setting up a market anywhere close by.

3. The District Judge who heard the case came to the conclusion, upon the evidence before him, that this did not amount to any grant of tolls; that all that was granted were the lands included in the taluk; and that the only reason for looking at the tolls was to ascertain the value of the lands. We think that there is

no difference between this market and any ordinary shop which, if it had a good-will and a large trade attached to it, would increase the value of the land and the amount of the revenue. Accordingly we think that the learned Judge is quite right in the view he has taken; and as to that it is only necessary for us to refer to the Regulations of 1793 which, to our mind, show clearly that the contention of the plaintiff cannot be correct. By those Regulations it was made illegal to take any tolls of this kind at all, and if the effect of those settlements was by implication to grant tolls, it was in fact for the Crown to be refusing to be bound by the Legislature or by the law of the country. We think it would be impossible for us to hold that where the two things are perfectly consistent and where this revenue may be payable for the use of the land (of course the person with whom it is settled putting it to the best use he can put it), and where it could be taken away, it would not be an illegal toll. Under these circumstances, and in the absence of any grant of any special privilege (without which it is admitted that any one may set up a market wherever he chooses, and may invite persons to come there for the purpose of selling goods), we think that the learned Judge was right in the conclusion at which he arrived with reference to these tolls.

4. In the result then the appeal by the plaintiff, so far as the claim for an injunction is concerned, will be disallowed, and in so far as it relates to the refusal by the lower Court to set aside the second pottah, his appeal will be allowed, and the appeal by the defendant so far as regards the setting aside the first pottah will be allowed, and as regards everything else both appeals will be dismissed. The costs, I think, must be in proportion to the success of the parties.