

(1913) 12 CAL CK 0018
In the Calcutta High Court

Jafar Ahmed and Others

APPELLANT

Vs

Maharaja Birendra Kishore Manikya Bahadar

RESPONDENT

Date of Decision : 22-12-1913

Acts Referred:

Citation : AIR 1914 Cal 820 : 24 Ind. Cas. 319

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendants in a suit for assessment of rent. The case for the plaintiff is that the defendants are his tenants in respect of same lands, that they have, without his consent and without any arrangement for payment of rent, unlawfully taken possession of the disputed land, and that although they have been repeatedly asked in recent years to arrange for the payment of rent they have taken no heed. The defendants set up a rent-free grant, on the allegation that the tank in dispute was excavated by their predecessors more than a century ago and that they have been in possession since then without payment of rent. They plead in the alternative that if their rent-free grant is not established, the right of the plaintiff to claim assessment of rent has been extinguished by adverse possession for more than twelve years on their part. The Court of first instance found upon the evidence that the defendants had been in possession without payment of rent for a long series of years and that the circumstances were such as to justify an inference that they held under a rent-free grant. In this view the Court disallowed the claim for assessment of rent. Upon appeal the Subordinate Judge has reversed that decision. He has laid it down as a proposition of law that mere length of possession cannot raise a presumption that the defendants held under a rent-free title. In this view he has made a decree in favour of the plaintiff for rent at a fair and reasonable rate.

2. The defendants have now appealed to this Court, and have contended that the Subordinate Judge has not appreciated the real question in controversy. In our opinion, there is much force in this contention. The question in controversy is not

whether from mere length of possession a presumption of rent-free title can be legitimately made, but whether from long possession without payment of rent the inference may properly be drawn that the defendants hold under a rent-free title. It has been repeatedly laid down that long possession without payment of rent may justify, in the circumstances of a particular case, an inference of rent-free title : *Bissonath Komilla v. Brojo Mohun Chuckerbutty* 10 W.R. 61 : 1 B.L.R.S.N. 2. *Radha Gobind Doss v. Prokash Chunder Doss* 14 W.R. 108. In the case before us it has been pointed out that in 1868 the property was sold in execution of a decree for money. Execution had been taken out against the grandsons of the original holder who, it is alleged, excavated the tank, which is still called after his name by the people of the locality. Possession was delivered to the purchaser in the following year, and in 1870 he conveyed the property to the predecessor-in-interest of the present defendants. It is not disputed that rent has never been realised, indeed, has never even been claimed, till quite recently, in respect of this land. It is not shown that the land] was at any time rent-paying. But it has been suggested in this Court that as the surrounding lands are rent-paying, the inference may be drawn that the disputed land also bears a similar character. The description of the land in the execution proceedings, however, goes to indicate that there is rent-free land on one side of the disputed property. We have thus the facts that the tank has been in occupation of the defendants and their predecessors for more than half a century, that it is called after the original holder who lived about a century ago and, as tradition has it, excavated the tank, and that rent has never been claimed or realised in respect of the property. Under these circumstances the proper inference to be drawn is that the defendants hold under a rent-free title. But even if the defendants were not able to establish a rent-free title, the claim of the plaintiff would be obviously barred by limitation. The plaintiff treats the defendants as trespassers, and they, on their part, set up a title by adverse possession. They have never paid rent, they have always claimed to hold the property rent free, and have repudiated their liability to pay rent to the plaintiff. Whichever view of the case is taken, the claim of the plaintiff cannot be sustained.

3. The result is that this appeal is allowed, the decree of the lower Court set aside and the suit dismissed with costs in all the Courts.