

(1889) 02 CAL CK 0007
In the Calcutta High Court

Jagat Kishore Acharjya Chowdhuri

APPELLANT

Vs

Khajah Ashanullah Khan Bahadur

RESPONDENT

Date of Decision : 13-02-1889

Acts Referred:

Citation : (1889) ILR (Cal) 281

Hon'ble Judges : Trevelyan, J; Mitter, J

Bench : Division Bench

Judgement

Mitter and Trevelyan, JJ.—The Magistrate in this case, following the decision in *Ambler v. Pushong* ILR Cal. 365, has maintained the second party in possession of, a piece of forest land. It appears not to be disputed that the right of possession upon the forest lands in question is exercised by cutting timber from time to time, and removing that timber, upon a certain price being paid therefor. It further appears that in Falgun last year (or March 1888), a number of trees was cut in the forest by labourers who had authority to do so either from the first party or the second party. It also appears that there was a disturbance of the peace consequent upon attempts being made by the parties respectively to remove the timber. The result was that on the 7th of June last, a lessee of the second party was bound down to keep the peace, and, on the 9th June, the present proceedings were instituted between the parties, the lessee not being made a party to these proceedings. All that the Magistrate finds in this case is this. He says: "It appears from the evidence of the witnesses produced by the first party that they were driven away by the men of the second party, and have been unable to enter the forest and remove the timber which they alleged to have been cut by them. This happened before the time of the initial proceedings, and that state of things still continues. Further, it appears that the men of the second party have been able to bring out the timber which was cut, with the exception of a few trees, which were cut, as is alleged, by a man who has since died." Upon these two facts being found, the Magistrate came to the conclusion that the possession of the second party was established when these proceedings were instituted. Having regard to the nature of the property in dispute, these two

facts, found in favour of the second party, could not constitute legal possession of the second party at the time the proceedings were instituted. The first party is entitled to assume that on the occasion preceding the one in which the dispute arose, his man were allowed to cut and remove timber in the forest without any disturbance of peace. There is evidence adduced by him on this point which has not been disbelieved by the Deputy Magistrate. He is, therefore, entitled to say that for the purposes of the question of law which has been raised before us, and for that purpose only, this fact should be assumed in his favour. If this contention be conceded, it seems to us to follow that what happened in March last could not have the effect of putting the first party out of possession; they would only be acts disturbing the possession of the first party. Having regard to the nature of the property in dispute, and the mode in which possession may be exercised over the property, we think that in order to find which party was in possession when the proceedings were instituted, it is necessary to enquire which party was in the undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one in which the dispute arose; and whichever party be found to have been in possession on that occasion, should be presumed to have possession at the time when the proceedings in this case commenced.

2. We desire to guard ourselves from being understood to express any opinion on the question of possession-that question is left to be decided by the Joint Magistrate. We simply make the assumption of fact, which the first party contended should be made, in order to decide whether the finding of the Joint Magistrate is sufficient in law to dispose of the case.

3. We set aside the order of the Joint Magistrate, and remit the record of the case to him, in order that it may be decided, on the evidence now on the record, with reference to the observations made above.