

**(1924) 06 CAL CK 0004**  
**In the Calcutta High Court**

Jinnatennessa and Others

APPELLANT

Vs

Abdul Halim Munshi and Others

RESPONDENT

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**Date of Decision :** 02-06-1924

**Acts Referred:**

**Citation :** AIR 1925 Cal 469

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### **Judgement**

1. This is an appeal by the plaintiffs against a decision of the District Judge of Tipperah affirming a decision of the Subordinate Judge at Comilla. The suit out of which this appeal arises is a suit by the plaintiffs to have their title declared to a 4-anna share in certain land. Plaintiff No. 1 claims as a daughter of one Safarruddi and the other plaintiffs claim as heirs of another daughter of Safaruddi who died leaving him surviving three sons entitled to 12-anna share in such land as he left, and two daughters entitled to the remaining 4 anna share of this land. As regards the lands in schedule ka and kha the first Court has found that they have been conveyed away by the three sons of Safaruddi. As regards the lands in schedule ga, gha and una the Court found that there was no document showing assertion of exclusive title but that inasmuch as these lands were held by the brothers in the same right as the lands which they had conveyed they must have asserted exclusive title to all the lands left by Safaruddi. The point that has been urged before us on behalf of the appellants is that this last conclusion is erroneous and that although the finding of the lower Appellate Court may have been right as to the lands of schedules ka and kha it is erroneous as regards the lands in the other three schedules and we were referred in support of this contention among other cases to the case of Balaram Guria v. Syama Charan Mandal AIR 1921 Jour. 37, where the law is considered and also to a recent judgment of Sir Asutosh Mukerji. Before we consider the law to be applied it is necessary to ascertain what are the facts in this particular case. Safaruddhi died 42 years ago leaving his wife Manik Banu him surviving and she died 36 years ago. The plaintiffs have not been able to establish that since his death they received anything in respect of the usufruct of the property either in kind or in cash and the finding is that during this period the lands were

being cultivated separately by the three brothers and that two of the brothers left the land and went to live with their father-in-law. Moreover it has been found that the two daughters knew of the conveyance of the lands contained in schedules ka and kha as they were living close by. It was further found that these were valuable lands and that no claim was made by the daughters to the sale-proceeds of the lands which were sold and an explicit finding of the lower appellate Court will be found at the foot of page 11 of the paper-book where it is said that it is impossible that the plaintiff's would not know that the brothers were asserting exclusive title to these lands. That seems to us a finding of fact and the appellants can only succeed if they can show that this finding is not justified by the evidence in the case. As already stated, from the evidence that there is, it seems to us that it is not possible to say that there is no evidence to support the finding to which we have just referred. Consequently we think that the lower Appellate Court was justified in the inference that it drew that the title of the brothers and their exclusive possession were asserted not only in respect of the lands which they sold but also in respect of the lands which are comprised in schedules ga, gha and una. The law, no doubt, is perfectly clear. The possession of one co-sharer enures to the benefit of the other co-sharers and does not, except under exceptional circumstances, amount to an ouster of other co-sharers. In the case in *Balaram Guria v. Syama Charan Mandal* AIR 1921 Jour. 37 the facts as to the assertion of the exclusive possession by the co-sharer were not so strong as they are in the present case. It is true that in that case there was a conveyance by the co-sharer who was in possession but it was a conveyance to a nephew and there was considerable doubt whether this transaction was not merely a benami transaction and this being so, it would clearly have been impossible in that case to rely on the evidence of the conveyance as an assertion of exclusive right by a, co-sharer to the property as against his other co-sharers. Both the Courts have found against the plaintiffs and have found an assertion by the brothers of their exclusive right to the property and we are not prepared to say in second appeal that these findings of facts are not justified by the evidence which was upon the record.

2. This being so, the appeal fails and is dismissed with costs.