

(1889) 06 CAL CK 0007
In the Calcutta High Court

Jonardon Mundul Dakna and Another	APPELLANT
Vs	
Sambhu Nath Mundul and Others	RESPONDENT

Date of Decision : 25-06-1889

Acts Referred:

Citation : (1889) ILR (Cal) 807

Hon'ble Judges : Gordon, J; Ghose, J

Bench : Division Bench

Judgement

Ghose, J.—This appeal arises out of a suit brought by the plaintiffs to recover possession of certain lands which they alleged had been demised to them by a certain landlord in the year 1289. The defence was, that the defendants held the land in question from a period prior to the execution of the lease in 1289 as a part of his jammai, and therefore the plaintiffs had no right to recover. They also pleaded that they were in possession of the land for more than twelve years, and, therefore, the plaintiffs' claim was barred by limitation.

2. Upon this state of the pleadings, certain issues were raised between the parties in the Court of First Instance: one was as to limitation, and another as to the title of the plaintiffs and the defendants respectively. Upon the application of both parties, the case was referred to arbitration; but the arbitrator to whom the case was referred confined his award only to the question of limitation, he being of opinion that the defendants had held possession of the land in suit for more than twelve years, and that the plaintiffs' allegation, that they had been in possession of it for some time and had been subsequently dispossessed, was not made out.

3. The matter then came before the Munsif for final disposal. That officer was of opinion,—and we think rightly of opinion,—that the award given by the arbitrator had left undetermined some of the matters which had been referred to him for decision; and we may here observe that the second and third issues laid down by the Munsif were issues which were essentially necessary for the determination of the case. Being of that opinion, the Munsif remitted the case to the arbitrator

with the view that the other issues in the case might be determined.

4. The arbitrator, however, declined to act further in the matter, and sent the case back to the Munsif. In this state of things, the Munsif had no alternative but to try the case out himself, and being of opinion that the plaintiffs' case was a valid one, and that the defendants had no jammai right in the land in question, he gave a decree to the plaintiffs.

5. The Subordinate Judge, on appeal, expressed himself as follows: "The arbitrator found, as a fact, that the defendant had been in possession for more than twelve years, and submitted his award against the plaintiffs. The award was perfectly legal, and was supported by the fact found, and it could not be set aside merely on the ground that the arbitrator had not decided all the points referred to him. The point decided by him was sufficient for the dismissal of the claim, and there was no necessity for any decision on the other points. The lower Court ought to have disposed of the case according to the award which was perfectly legal." He therefore set aside the order of the lower Court, and directed that the case should be disposed of in terms of the award filed by the arbitrator.

6. It seems to us that the view which the Subordinate Judge took is not the correct one; and that, in the circumstances of this case, the Munsif was right in remitting the case to the arbitrator for determining the points which he had left undetermined. It will be observed that the lease under which the plaintiffs claimed the property was one granted in 1289, i.e., within twelve years of the institution of the suit. The defendants no doubt plead the law of limitation, but they admit that the person who granted this lease to the plaintiffs is the person under whom they have been holding the land as tenants. It follows therefore that, if the defendants had been holding the land adversely to anybody for more than twelve years, it must have been their own landlord. But there could be no adverse possession against the landlord, and the defendants could not acquire a title against him. And if the landlord had brought a suit to eject them, they could not have successfully set up the plea of limitation. It has been found that the landlord gave the lease to the plaintiffs in 1289, and they bring this suit, upon the basis of that lease, to recover possession, and upon the ground that the defendants have no title to the land; and the whole question between the parties seems to be, whether the title of the plaintiffs or of the defendants is to prevail.

7. We are therefore of opinion that the case could not be concluded by the finding that was come to by the arbitrator upon the question of possession, and that the Munsif was right, when the arbitrator declined to complete the award, in deciding the case himself.

8. Accordingly, we direct that the case be sent back to the Subordinate Judge, with the view that he should retry the appeal on its merits. The costs will abide the result.