

(1919) 02 CAL CK 0001
In the Calcutta High Court

Jotirmoy Moulik

APPELLANT

Vs

Khudiram Sadhu Khan and Kalimati Dassi represented by her
Husband Ashutosh Dey Mondal

RESPONDENT

Date of Decision : 03-02-1919

Acts Referred:

Citation : AIR 1919 Cal 589 : 50 Ind. Cas. 908

Hon'ble Judges : Ernest Fletcher, J

Bench : Single Bench

Judgement

Ernest Fletcher, J.—This appeal is preferred by plaintiff No. 1 against a decision of the Additional District Judge of Jessore, dated 19th February 1917, reversing a decision of the Munsif of the same place. The plaintiff brought a suit against the defendants, alleging that they were his tenants, for an assessment of fair and equitable rent. The first Court decreed the suit. The lower Appellate Court dismissed it apparently on two grounds, firstly, on defect of parties and secondly, on the ground of limitation.

2. What happened is this. There were two jamas. There was a dispute between the plaintiff and another man as to whether the two jamas in suit belonged to one particular Ganti or the other. These two Gantis are referred to in the judgment of the learned Judge as Rs. 136 and Rs. 70 Ganti respectively. The parties resorted to litigation. The present plaintiff was a plaintiff and the other Gantidar was a defendant and the present tenant was also a defendant.

3. The matter was referred to an arbitration. What the arbitrators found was that these two plots of land were situated within the limits of the plaintiff's Ganti and, therefore, according to the terms of the award the learned Judge passed a decree declaring the plaintiff's title to the two plots of land in dispute in the presence of the other Grantidar and the present defendant.

4. It is contended, and rightly I think, that the learned Judge was wrong in holding that the other Gantidar should have been made a party to the present

suit, and it is argued that the presence of the other Gantidar is not necessary and he should be made a party only in the case of adjudication of the plaintiff's title and that that has already been done.

5. The other question raised is the question of limitation and it is argued that the learned Judge was wrong both on facts and law regarding this question. So far as I can gather, the learned Judge thought that the only provision applicable to the present suit was Article 144 of the Indian Limitation Act. It is quite dear, and it is also conceded, that that Article has nothing to do with the suit at all. It is not suggested that any Article of the Indian Limitation Act applies to the present suit.

6. Moreover, on facts also, the learned Judge was wrong because the record shows conclusively that the decree establishing the plaintiff's title was passed in the year 1903 and that the present suit was instituted in the year 1914, that is, well within 12 years from the date of the declaration of the plaintiff's title and, therefore, no question of limitation or adverse possession arises in the present case.

7. The judgment and decree of the lower Appellate Court are set aside and the case is remitted to that Court for the appeal to be re-heard for settling a fair and equitable rent having regard to the foregoing remarks.

8. Costs will abide the result.