

**(1913) 02 CAL CK 0002**  
**In the Calcutta High Court**

Kali Charan Shaha and Others

APPELLANT

Vs

Dabiruddin Ahammad and Others

RESPONDENT

---

**Date of Decision :** 06-02-1913

**Acts Referred:**

**Citation :** AIR 1914 Cal 748 : 18 Ind. Cas. 616

**Hon'ble Judges :** Stephen, J; Mullick, J

**Bench :** Division Bench

---

## Judgement

1. The plaintiffs in this case sued for a declaration of their title to a certain Jalkar, known as Durgadaha Damush, and for an injunction prohibiting the defendants from catching fish in the Damush or Jalkar. It is admitted that the plaintiffs are entitled to an eight-annas share of the Jalkar. The question is whether they or the defendants are entitled to the other eight-annas share. In the Court below, a question was raised as to the construction of a darpatni which was the foundation of the titles of both parties. But it is now admitted that the darpatni does not cover the Jalkar in question. The result is that the plaintiffs are admittedly entitled to eight annas of the Jalkar and they put forward a lease of 1299 B.S. by one Radhikanath in respect of the other eight annas. On the findings of the Court below, this lease is valid in respect of the eight annas in question unless the defendants can set up any prior claim. They cannot set up any such claim on the darpatni under which they claimed in the lower Courts. They have, however, proved, according to the findings of the first Court which are not displaced by those of the second, possession for 12 years previous to the granting of the lease in 1892. The lower Appellate Court has held that that possession will not avail them since they cannot set it up as being adverse to their landlords. In this, the lower Appellate Court is wrong; for, the effect of the principles of the decisions in the case of *Ishan Chandra Mitter v. Raja Ram Ranjan Chakarbutty* 2 C.L.J.125; *Icharan Singh v. Nilmoney Balidar* 35 C. 470 : 7 C.L.J. 499; 12 C.W.N. 636 and *Gopal Kishna Jana v. Lakhiram Sirdar* 16 C.W.N. 634; 14 Ind. Cas. 212 as applied to this case, is that the defendant by his possession has gained a title as against all the world and this holds good as

against the person who was in fact his landlord though he did not know, as it might have been against any one else. The plaintiff seeks now to disturb this right to be a tenant, for he is setting up a claim which is equivalent to a claim for khas possession. To this claim, the defendants' possession is a good answer; and we hold that he has established his right to be treated as a tenant.

2. Under these circumstances, the appeal is, therefore, allowed, the judgment and decree of the lower Appellate Court are set aside and the appellant is entitled to his costs throughout.