

(1899) 03 CAL CK 0002

In the Calcutta High Court

Case No : Appeal From Appellate Decree No. 1629 of 1897

Kedar Nath Sanyal

APPELLANT

Vs

Raj Nath Neogi and others

RESPONDENT

Date of Decision : 15-03-1899

Acts Referred:

Citation : (1899) 03 CAL CK 0002

Judgement

1. The Defendants claimed six plots of land alleging that they formed their mokurari tenure held direct under the zemindars who owned a five-anna odd gunda share of perganna Attia, and they say that they were dispossessed from the same by the first three Defendants in Bysack 1301. They ask that their right to khas possession may be declared and khas possession of the land be given them. These Defendants denied the alleged right of the Plaintiffs to the mokurari jama, and said that the lands appertained to the holding of one Jagut Jiban Bose, under whom the Plaintiffs held as under-tenants; that they, the Defendants, or at least one of them, had purchased a share of that holding in the year 1300, and that the Plaintiffs have surrendered any right which they have under them; they also deny that two of the plots appertain either to the tenure alleged by the Plaintiffs or to the holding set up by them, and they say that they were part of the Brahmotter land belonging to the proprietor of an estate who had made the same over to them. The first Court held that the Plaintiffs had wholly failed to prove that the plots claimed were their mokurari tenure held under the proprietors of the estate.

2. It further held that the Defendants had shown that there was a mokurari holding in the name of Jagut Jiban Bose, and that the Plaintiffs held as under-tenants of the latter, and that two of the plots were, as the Defendant alleged, Brahmotter with which the Plaintiffs had nothing to do. On these findings the Court dismissed the suit, and we think it did so rightly. The Plaintiff's had failed to establish the title on which they sued, and to give them a decree on the title found by the Court, would have been to give them a position which they never sought to occupy, and which was wholly inconsistent with the position which they

sought to establish.

3. The Plaintiffs appealed to the Subordinate Judge who reversed the decision of the Munsif. He held that the Plaintiffs had failed to prove that the lands appertained to their mokurari tenure held under the proprietors of the estate. Indeed, there appears to have been no attempt to prove this. He further found that the Plaintiffs had also failed to prove that Jagut Jiban Bose had any mokurari to which the land could appertain, and consequently that it was not shown that the Plaintiffs occupied the lands as under-tenants of Jagut.

4. The Court then proceeded to consider whether the Plaintiffs on the ground of long prior possession, were entitled to a decree. The Subordinate Judge said that the Plaintiffs had not gone to trial on the question of a prescriptive right derived from adverse possession, and that he could not give them a decree on that ground, and, undoubtedly, on that point we think he was right.

5. If the Plaintiffs set up any such title it might have been necessary for the Defendants to meet it by proving their case which was that the Plaintiffs were not in possession by any adverse right, but as under-tenants of the holding, a part of which belonged to them. The Subordinate Judge then held that the Defendants having proved no title were trespassers on the land and that although the Plaintiffs had failed to prove the specific rights set up, they had been in possession of the land for a great number of years under some right or other, and that they were therefore entitled to a decree on that ground.

6. It is impossible to ascertain from the judgment of the Subordinate Judge what right he supposed the Plaintiffs had, whether it was a tenancy right or any other right; and although he has expressly declined to give them a decree on the ground of their adverse possession, he has, in substance, given them a decree on that ground, because he holds that the Defendants were trespassers, and that the Plaintiffs were on the strength of their long prior possession entitled to a decree as against them. The effect of the decree undoubtedly would be to prevent the Defendants in any future litigation from asserting that this land was any part of the holding which they profess to have, or that the Plaintiffs hold it as under-tenants under them.

7. It seems to us that when the Court found that the Plaintiffs wholly failed to establish the title which they came into Court to establish, their suit ought to have been dismissed, and that on their failure to prove that title, it was not necessary to put the Defendants to any proof of the title which they set up.

8. The learned pleader for the Respondent put the case as one in which the Plaintiffs had established a title of the same kind, but lower than that which they asserted in the plaint. This is not so. No doubt, if while asserting a mokurari title under the proprietors, they had failed to establish their particular title, but had proved a right of occupancy under the proprietor that would have been a good title under which they could recover against the Defendants.

9. But in point of fact, on the decision come to by the Subordinate Judge, no title of any kind has been established. The Plaintiffs could only, we think, recover this land as against the Defendants on proving the title which they set up. They had failed as regards some of these plots to get possession in a possessory action which they had previously brought. Having failed to prove their alleged title their suit should have been dismissed, and it was not right to give them a decree as the Subordinate Judge did on some title of a wholly vague and indefinite character. The decree of the Subordinate Judge must be set aside and that of the Munsif restored with costs in this Court and in the lower Appellate Court.