

(1905) 12 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2361 of 1903

Kishwar Nath Sahi Dev

APPELLANT

Vs

Kali Sankar Sahai and Others

RESPONDENT

Date of Decision : 21-12-1905

Acts Referred:

Citation : (1905) 12 CAL CK 0011

Judgement

Maclean, C. J.

1. The lower Appellate Court, differing from the Court of first instance, has dismissed the Plaintiff's suit, solely on the ground of limitation. The property in dispute is a tank in the town of Ranchi. It appears that the Plaintiff's ancestor had granted a lease of this tank with other property to the Ranchi Municipality. That lease expired in 1881. The Municipality, however, was allowed by the landlord to hold over and did hold over until the year 1890, when it gave up possession. It appears that in 1882 the principal Defendant sued the Municipality to recover possession of this tank, and obtained a decree in 1883 and possession in 1884. Ever since that time the Defendant has been in possession. The present suit was not instituted until 1902, that is, long after 12 years had elapsed from the date of the Defendants obtaining possession. These facts are not disputed. The question is whether, in these circumstances, the Plaintiff is barred. His case is that, having regard to the decisions in the case of Krishna Gobind Dhur v. Hari Churn Dhur ILR 9 Cal. 367 (1882) and the case of Sarat Sundari v. Bhoba Pershad ILR 13 Cal. 101 (1886), inasmuch as the tenancy in favour of the Municipality did not expire until the year 1890, the statute did not begin to run against him as between himself and the principal Defendant until that year, and if that is so, his suit is instituted within 12 years of the date of the commencement of that adverse possession. It is apparent from those cases that where there is a current lease of the property in question time does not commence to run against the landlord until the expiration of the lease. That has not been disputed. But the distinction sought to be drawn in the present case is that here the lease determined in 1881, and although the Municipality held over with the consent of

the landlord it can only be regarded as holding over under an annual tenancy and, that the principle of the above-mentioned cases does not apply, inasmuch as the landlord could have determined such annual tenancy if he were so minded. In the particular circumstances of the present case it is, we think, important to ascertain whether the adverse possession of the principal Defendant was, as pointed out in the judgment of the Privy Council, reported in *Radhamoni Debi v. The Collector of Khulna* 4 C.W.N. 597 (1900), "adequate in continuity, in publicity and in extent so as to show that it was possession adverse to the competitor." No such case as that was set up by the Respondent, and *prima facie*, the ordinary rule would seem to apply, namely, that the period of limitation did not begin to run against the Plaintiff until the expiration of the tenancy in 1890. I am, however, disposed to think that, if the fact were substantiated that the adverse possession was of the nature I have just stated, the Plaintiff would be barred inasmuch as he could at any time have determined the tenancy and sued the principal Defendant in ejectment. His hands were not tied by the lease, so as to prevent him suing, if the adverse possession of the principal Defendants were of the nature described. But we are in the dark as to the facts, save to the extent I have stated. I think, therefore, that the case must go back to be tried out on the merits. If it transpire that the possession was of the character I have described, he would be barred. With these observations we remit the case to the lower Appellate Court to be dealt with on the merits. The costs will abide the result.