
(1913) 12 CAL CK 0019
In the Calcutta High Court

Maharaja Birendra Kishore Manikya Bahadur

APPELLANT

Vs

Chandi Charan Dey and Others

RESPONDENT

Date of Decision : 22-12-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103

Citation : AIR 1914 Cal 870(2) : 24 Ind. Cas. 354

Hon'ble Judges : Beachcroft, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for declaration of title to land and for assessment and recovery of rent. His case is that the defendants are tenants of some lands within his estate and have unlawfully taken possession of the disputed land. The defendants allege a rent-free grant of the land on which their great-grandfather excavated a tank still known by his name, and contend that the claim is barred by limitation as they have, to the knowledge of the plaintiff, asserted a rent-free title for more than 12 years, and have never paid rent. The Courts below have dismissed the suit as barred by limitation. This decision has been assailed before us in this appeal. We are of opinion that the suit must fail on the merits, apart from the question of limitation.

2. The Subordinate Judge has omitted to try the fundamental question in the case, namely, whether the defendants have a rent-free title to the disputed property. We have accordingly dealt with the case u/s 103, Civil Procedure Code. The Court of first instance found that the plaintiff had failed to establish that the tank was included within the mal lands of his zemindary. In addition to this, we have the fact that the tank is popularly known by the name of Ram Narayan, the great-grandfather of the defendants, which lends support to the case of the defendants that the tank was excavated by him. One of the defendants pledges his oath to the effect that the tank has been in his possession for more than forty years, that he inherited the property from his father, and that the family has been in occupation of the tank for four generations. There is no reason to distrust

this testimony, which is practically uncontradicted. In these circumstances, the principle recognized in the cases of Bissonath Komilla v. Brojo Mohun Chuckerbutty 10 W.R. 61 : 1 B.L.R. S.N.I., Radha Gobind Doss v. Prokash Chunder Doss 14 W.R. 108. applies, and the inference may legitimately be drawn that, as no rent has ever been claimed or paid for a long series of years, the defendants hold the property under a rent-free grant as alleged by them.

3. The result is that the decree of the Court below is affirmed, though not for the reasons assigned by it, and this appeal dismissed.