

(1913) 03 CAL CK 0014
In the Calcutta High Court

Maharaja Birendra Kishore Manikya Bahadur	APPELLANT
Vs	
Ram Chandra Dey and Others	RESPONDENT

Date of Decision : 31-03-1913

Acts Referred:

Citation : 30 Ind. Cas. 948

Hon'ble Judges : Lawrence Jenkins, C.J.;Beachcroft, J;Asutosh Mookerjee, J

Bench : Full Bench

Judgement

1. This appeal must fail. Both the lower Courts have held the suit to be barred by adverse possession. But Mr. Sinha, on behalf of the plaintiff, has sought to escape from that by suggesting that the plaintiff and the defendants were respectively landlord and tenants, so that the bar of limitation could not apply. But the foundation of his argument fails. The plaint clearly proceeds upon the assumption that there was not that relationship of landlord and tenant. This is the view also advanced in the written statement, and the evidence that has been brought to our notice shows that even at the trial the case was that the defendants were in possession not as tenants, but wrongfully and without any right. The Munsif found definitely and clearly that the defendants were not the Maharaja's tenants. The finding of the District Judge is not clear on this point, but he was of opinion with the learned Munsif that the appellant was aware of the adverse title claimed by the defendants-As I understand the facts found, they come to this. The defendants have been in possession for more than 12 years and they have been in possession on their own account, though they claim no more than a rent-free title. Their possession in the circumstances would be adverse to that extent and would furnish an answer to this suit.

2. For the reasons I have indicated the judgment and decree of the lower Appellate Court must be confirmed with costs.