

(1913) 12 CAL CK 0009
In the Calcutta High Court

Maharaja Birendra Kisore Manikya Bahadru

APPELLANT

Vs

Gagan Chandra Chakrabarti

RESPONDENT

Date of Decision : 22-12-1913

Acts Referred:

Citation : 30 Ind. Cas. 902

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 of fair rent. The case for the plaintiff is that the defendant has without any title taken possession of the disputed land which is situated within his estate, that, although rent has been demanded repeatedly the defendant has not paid rent and has refused to take a settlement. The case for the defendant is that she has a rent-free title to the disputed tank and that in any event she and her predecessors have for generations held the property in adverse title, so that the claim of the plaintiff for assessment of rent is barred by limitation. The Courts below have concurrently dismissed the claim for assessment of rent.

2. The plaintiff has now appealed to this Court and has contended on the authority of the decision in Nityanund Ghose v. Kissen Kishore W.R. 1864 Act X Ruling 82, that the relationship of landlord and tenant exists between the parties and that consequently the mere assertion of a hostile title by the defendant cannot possibly be taken to have extinguished his claim for assessment of rent in respect of the disputed land. In our opinion, there is no foundation for this contention. In the case upon which reliance is placed, it was observed that it is a very usual thing for a man to squat on a piece of land, or to take into cultivation an unoccupied or waste piece of land. Tenancy, in a great many districts in Bengal, commences in this way and where it does so commence, it is presumed that the cultivator cultivates by the permission of the landlord, and is under obligation to his landlord to pay him a fair rent when the latter may choose to demand it. Thus the established usage of the country regards these parties as

landlord and tenant, and unless the landlord chooses thus to treat him, the cultivator is not regarded, as he would be by the law as administered in England, as a trespasser, but as a tenant, and he would be so although he may never have expressly acknowledged the landlord's right or entered into an express contract - with him for the payment of rent. If he chooses to cultivate the zemindar's lands and the zemindar lets him, there is an implied contract between them, creating a relationship of landlord and tenant." The principle thus laid down has no application to the circumstances of this litigation. The case for the plaintiff is that the defendant unlawfully took possession of this tank. The defendant avers that more than 12 years before the commencement of this suit, in the course of Settlement proceedings, she set up a rent-free grant and disclaimed all liability to pay rent to the plaintiff in respect of the disputed land. Notwithstanding this disclaimer of liability the plaintiff has waited for more than 12 years and now seeks a declaration that he is entitled to have rent assessed on this land. In our opinion, the right of the plaintiff to have rent assessed on the land has been extinguished under Article 144 of the second Schedule of the Limitation Act. It is not alleged by the plaintiff that there was, at any time, a relationship of landlord and tenant between the parties. On the other hand, his case is that the defendant without any title unlawfully took possession of the disputed land. The Subordinate Judge has incidentally observed that on the authority of the decision mentioned, the inference may possibly be drawn that there was an agreement of tenancy between the parties. This, however, is not the case either of the plaintiff or of the defendant.

3. The result is that the decree of the Court below is affirmed and this appeal dismissed.