

(1913) 04 CAL CK 0043
In the Calcutta High Court

Maharaja Birendra Kisore Manikya Bahadur

APPELLANT

Vs

Ram Charan Dass and Another

RESPONDENT

Date of Decision : 01-04-1913

Acts Referred:

Citation : 30 Ind. Cas. 942

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

Bench : Full Bench

Judgement

1. The subject-matter of this litigation is a tank which, it is conceded, was excavated by the defendants' predecessor very many years ago. It is further conceded that the plaintiff has received no rent in respect of this tank, and that in fact no rent has ever been paid by the defendant who claims in this suit that it is his rent-free land. He has succeeded in both the lower Courts in establishing the plea of limitation. The facts which are conceded appear to me to support that plea. It was argued that that this case is distinguishable from those with which we have already dealt, because the encroachment by which possession is said to have been obtained of this land on which the tank is situated, constituted the relationship of landlord and tenant between the plaintiff and the defendant and that therefore, the plea of limitation is not open to the defendant as being a tenant of the plaintiff. But, in my opinion, there is an error in this argument. What we have to see is whether this encroachment was considered as annexed to the holding. Now, that has not been the plaintiff's case and this argument has been advanced before us with some ingenuity at the last moment to escape from the plea of limitation. As I read the plaint and all proceedings in this suit, it was not suggested that this tank was a part of the holding. If it was not a part of the holding, then that doctrine which would entitle the landlord to say that there is presumption that the encroachment is for his benefit has no application. In fact we find that the facts are as I have already indicated, and it is established that more than 15 years before suit there was a direct assertion of title negating the theory of encroachment which would have conferred upon this tank the character of an addition to the original holding. In the circumstances, I think, the

endeavour to escape from the plea of limitation based on adverse possession for more than 12 years has failed, and we must confirm the decree with costs.