

(1912) 01 CAL CK 0040
In the Calcutta High Court

Maharajah Birendra Kishore Manikya Bahadur

APPELLANT

Vs

Roshan Khan and Another

RESPONDENT

Date of Decision : 04-01-1912

Acts Referred:

Citation : 13 Ind. Cas. 518

Hon'ble Judges : D. Chatterjee, J;Caspersz, J

Bench : Division Bench

Judgement

Caspersz, J.—This is one of the numerous appeals involving the same question the right claimed by the plaintiff, the Maharaja of Hill Tipperah, to assess the niskar (rent free) tanks situated in his Chakla Roshauabid. We have heard the arguments in this appeal and in Maharaja Birendra Kishore Manikya Bahadur v. Akram Ali 13 Ind. Cas. 513 and Maharaja Birendra Kishore Manikya Bahadur v. Dilwar Ail 13 Ind. Cas. 517 and Asalat Khan v. Maharaja Birendra Kishore Manikya Bahadur 13 Ind. Cas. 519 which may be regarded as test cases The plaintiff's suits have been dismissed in Maharaja Birendra Kishore Manikya Bahadur v. Akram Ali 13 Ind. Cas. 513 and Maharaja Birendra Kishore Manikya Bahadur v. Dilwar Ali 13 Ind. Cas. 517 in which judgment, has just been delivered and this appeal, also, must fail. The Subordinate Judge has held the suit to be barred because it was brought more than twelve years after the defendant's assertion of adverse title before the Settlement, Officer on the 25th February 1896. In the opinions already expressed the plaintiff's suit is not maintainable because his right to assess rent on the niskar tanks has not accrued In the present, case (which corresponds with suit No. 399 of 1908 of the first Court) no sanid chitti was produced or set up by the defendants, their claim was to hold the tank rent-free, in virtue of their ancestral title. In so far as that claim is concerned, it has been found to be hostile and it must be deemed hostile so long as the tank is used as such. The appeal is dismissed but without costs, as the respondents do not appear.

D. Chatterjee, J.

2. In this case the defendants pleaded old ancestral rent-free title and also title by adverse possession. The defendant No. 1, however, stated in his deposition that his ancestor had got this lakheraj on payment of gun which is translated as the capitalized value of probable rent. The Courts below have held that the payment of gun had not been made out but that the plea of the payment implies the land was at one time mal. That it was once the mal of the plaintiff is not denied and if the payment of gun is not proved the land is still mal unless any title by adverse possession or otherwise has arisen in favour of the defendant. The finding is that the defendant and his predecessors have been in possession without paying any rent for over 12 years: that by itself is not sufficient for basing a valid title in for of the plaintiff's suit as there is no finding as to who dug the tank and when and under whose order. There is, however, the settlement khatyan showing that about the 26th February 1896 the defendant, No. 1 claimed the land as rent free and the plaintiff's agent, denied the claim. There was thus a clear claim of niskar title unqualified by reference to any document and a clear denial of the same by the plaintiff's agent. A complete hostile right, was claimed to the knowledge of the plaintiff and no suit was brought until more than 12 years after.

3. I think that this suit as framed is clearly barred by limitation and has been rightly dismissed.

4. I agree, therefore, in dismissing the appeal without costs.