
(1912) 01 CAL CK 0013
In the Calcutta High Court

Maharajah Birendra Kishore Mankya Bahadur	APPELLANT
Vs	
Dilwar Ali and Others	RESPONDENT

Date of Decision : 04-01-1912

Acts Referred:

Citation : 13 Ind. Cas. 517

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

Bench : Division Bench

Judgement

Caspersz, J.—This is one of the many 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 Roshanabad. We have heard the arguments in this appeal and in Maharajah Birendra Kishore Manikya Bahadur v. Akram Ali 13 Ind. Cas. 513; Asalat Khan v. Maharaja Birendra Kishore Manikya Bahadur 13 Ind. Cas. 519 and Maharajah Birendra Kishore Manikya Bahodur v. Roshan Khan 13 Ind. Cas. 518 which may be regarded as test cases. The plaintiff's suit has been dismissed in appeal in Maharajah Birendra Kishore Muinkya Bahadur v. Akram Ali 13 Ind. Cas. 513 in which judgment has just been delivered and this appeal must fail. The Sub-Judge was of opinion, in disposing of Appeal No. 293 of 1909, from which this second appeal has originated, that the defendants on the 14th May 1896 had clearly asserted a hostile title to the plaintiff, and, that being so, the claim of the plaintiff is time-barred and the defendant's rent-free right by adverse possession is established." In my opinion, the plaintiff's suit is not maintainable, because his right to assets rent on the niskar tanks has not accrued. In the present case no sanad chitti was produced or set up by the defendants; their claim was to hold the tank rent free in virtue of immemorial user. In so far as the claim of the defendants to hold the tank and banks as niskar is concerned, it was clearly possible to the claim of the Maharaja to regard these lands as assessable to whilst the tank continued to be used as such. In that view the suit is barred by limitation.

2. The appeal is dismissed but without costs as the respondents do not appear.

D. Chatterjee, J.

3. In this case no sanad is presumed, but title by possession as lakheraj from time immemorial and also adverse possession pleaded. If the Courts below had found ancient possession without payment of rent there might be a presumption of lakheraj title, but there is no such finding, as the Court below dismissed the suit on the ground of limitation. The settlement khntian shows that the defendants, about May 1896, claimed to hold the land as rent free and the plaintiff's agent denied the same: a title completely hostile to the plaintiff was, therefore, set up. It does not matter when the record was finally published. There was the claim and the denial and the order for an entry that no jama had been fixed does not negative the claim made by the defendant, for it does not signify that the land is liable to pay rent. There is, therefore, a clear assertion of adverse title and that has been submitted to for more than 12 years. I think that under the circumstances the suit, as brought, is barred by limitation and the appeal should be dismissed.