

(1922) 06 CAL CK 0015
In the Calcutta High Court

Mohabbat Ali

APPELLANT

Vs

Tofar Ali and Another

RESPONDENT

Date of Decision : 15-06-1922

Acts Referred:

Citation : AIR 1923 Cal 369 : 76 Ind. Cas. 481

Hon'ble Judges : Walmsley, J; Ghose, J

Bench : Division Bench

Judgement

Walmsley, J.—This appeal arises out of a dispute between a Muhammadan uncle and his nephew. There were three brothels. The plaintiff Mohabbat Ali, Atar Ali—the father of the principal defendant, and Rakbat Ali and they appear to have inherited three kanis of land from their fathers Rakbat Ali took one kani and left his brothers and was not in any way concerned with them thereafter. Atar Ali died leaving a widow, a daughter and the principal defendant. The widow left the village with her daughter and the principal defendant was brought up by Mohabbat Ali and we have not to consider in this case about the shares that descended to the widow and the daughter. Mohabbat Ali had then two kanis in his possession and he brought the principal defendant up and gave him and his sister in marriage. The case of the plaintiff is that after his father's death and after Atar Ali's death, he was able to buy some land with his own money and that, shortly before the suit, the principal defendant Tofar Ali dispossessed him from that purchased land claiming that he had a share in it. The case made by the defendant Tofar Ali in the Courts below was that part of the money used in purchasing the property in dispute was supplied by him. It appears to me that the Judges in the Courts below, although they profess to recognize that the principles of a joint Hindu family do not apply to a Muhammadan family, have fallen into that very error and have regarded the evidence in the light of those principles. On the face of the documents as they stand, the purchase was made by Mohabbat Ali exclusively and Tofar Ali had no share in purchases. It was clearly, therefore, the duty of Tofar Ali to show that he had supplied part of the purchase-money, and, on the findings of fact recorded by the lower Courts, it

must be held that he failed to give such proof. The Courts proceeded on the footing that, as the uncle and the nephew were living jointly the money must have come from the joint fund. But, as I have said, that view involves the error of applying to this case the principles of a Hindu joint family Reference is also made to an arbitration proceeding which is said to have warded 1/3rd of the land to Tofar Ali and 2/3rds to Mohabbat Ali. But that proceeding was never brought into Court and it cannot operate to give any title to the nephew. Another piece of evidence to which reference is made on behalf of the defendant is the Record of Rights in which the uncle and the nephew are shown to be in joint possession with an interest of eight-annas each. This record was prepared subsequent to the present institution of the suit and, of course, much later than the arbitration proceedings and its value is reduced to insignificance by the fact that it is not in keeping with the award of the arbitrators. It appears to me that the learned Judge of the lower Appellate Court has come to a wrong Conclusion for the reasons which I have mentioned and that this appeal must, therefore, be decreed with costs. The plaintiff's title will be declared to the lands in schedule ka of the plaint and he will recover khas possession of the land in schedule hha. So far as the prayer for mesne profits is concerned, having regard to the circumstances of the case, particularly to the relationship between the parties, that part of the Suit is dismissed. The decree of the lower Appellate Court is varied accordingly and the suit decreed on the terms aforesaid. The plaintiff will be entitled to his costs in this Court as well as in the Courts below.

Ghose, J.

2. I agree.