
(1918) 05 CAL CK 0041
In the Calcutta High Court

Murari Mahan Das

APPELLANT

Vs

Tofel Sha and Others

RESPONDENT

Date of Decision : 28-05-1918

Acts Referred:

Citation : 47 Ind. Cas. 164

Hon'ble Judges : Syed Shamsul Huda, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This appeal is preferred by the plaintiff against the decision of the learned District Judge of Birbhum, dated the 14th September 1916, affirming the decision of the Subordinate Judge of Suri. The suit was brought to recover possession of certain Chowkidari Chakran landa lying within two Mouzas. The plaintiff admittedly has got a fifteen-annas shard of these Mouzas under leases granted to him by the owners of the property. The question arises as to the remaining one-anna share; and the way that question arises is this: The defendants are Putnidars claiming through one Gora Chand Roy who originally owned this one-anna share, and the question is whether in the Putni lease granted by Gora Chand Roy the resumed Chowkidari Chakran lands were included, because if they were included it is quite clear that the subsequent lease of the one-anna share of the Chowkidari Chakran lands to the plaintiff was ineffective. The first point is what passed by the lease? The words of demise in the lease are purely general words. But it is said that these general words are cut down by reason of certain words that appear subsequently in the Putni lease, and those words have been translated by the learned Judge in this way: That if the Chowkidar's Chakran lands were resumed, the Putnidars would get them. Dr. Mitter wishes to translate them in this way: That if the Chawki-dar's Chakran lands were resumed, then a lease of the resumed lands would be granted to the Putnidars. Of course, in that view, to give full effect to the demise, you have got to exclude from the demise the resumed Chowkidari Chakrau landi because the parties provided by express terms that, if they were resumed, a new and independent lease would be given to the Putnidars. Apparently the words do not

bear the meaning that Dr. Mitter wishes them to bear. The learned Judge, according to Mr. Justice Shamsul Huda, gives more or less an accurate translation of those words. That being so, the words were simply put in to explain that the lease was to include all Chowkidari Chakran lands that might be resumed, so as to conclude any question that might be raised subsequently between the parties. If that is so, it is quite clear that the plaintiff at the time he took this lease of the one-anna share got nothing because his lessor's predecessor-in-title had already parted with all his interest in the Chowkidari Chakran lands by the Putni in favour of the defendants.

2. Then another point has been raised, and that is that the plaintiff has got a title by adverse possession. The learned Judge remarked that that case was never raised in the lower Courts and I think that is probably right, because, if the defendants are no-sharers with the plaintiff, there is no allegation that there was any act by the plaintiff which would render his possession adverse as against his co-sharers. His case was that the defendants had no interest in these Chowkidari Chakran lands. He never set up any case that, if the defendants had any interest, they had lost it by reason of having been excluded by the plaintiff. I think the learned Judge was right in saying that no case of adverse possession arose in the present case and that that case had never been made. In that view, the present appeal fails and must be dismissed with costs.

Syed Shamsul Huda, J.

3. I agree.