

(1911) 04 MAD CK 0019
In the Madras High Court

Muthurakkoo Thevan and Others

APPELLANT

Vs

Robert Gordon Orr and Others

RESPONDENT

Date of Decision : 12-04-1911

Acts Referred:

Citation : (1912) ILR (Mad) 618 : (1911) 21 MLJ 615

Judgement

1. The District Judge has found that the defendants have acquired a prescriptive right of tenancy to the excess lands claimed by the plaintiffs. We

accept the finding. Mr. Rungachariar contends that as the Judge has not found that the plaintiffs or their predecessors in interest were aware more

than 12 years before this suit of the encroachment made by their tenants the defendants cannot be taken to have acquired a prescriptive right. His

argument is that a tenant who encroaches upon his lessor's land adjoining the land leased to him must prove that he set up to the knowledge of his

lessor more than 12 years prior to the suit in ejectment a right to hold the land encroached on as a tenant. We are unable to uphold this argument.

Unquestionably the ordinary rule of law is that possession held by a person in his own right is adverse to the true owner, whether the owner is

aware of such possession being taken or not, and if the adverse possession be continued for the statutory period, it will confer a prescriptive title

on the trespasser. This rule is qualified by the principle that if the trespasser while in possession claims a right less than the absolute ownership in

the land he will acquire by prescription only the inferior title set up by him. The title acquire will be determined by the animus possidenti of the

trespasser. It is also well established that when possession is proved by a person it will be presumed to be held in his own right. This presumption,

no doubt, is not applicable in cases where a special relationship exists between the parties such as tenants in common or members of an undivided family. The court will, in such cases, presume that possession is held on behalf of all the co-owners or the members of the family and it will lie on the possessor to prove that he held exclusive possession to the knowledge of those whose rights he seeks to affect by his possession. What then is the proper presumption where a tenant takes possession of lands not included in his holding, taking advantage of his character as tenant? We are clearly of opinion that the view enunciated by Markby J. in *Guroo Doss Roy v. Issur Chunder Bose* (1874) 22 W.R. 246 is correct. That learned judge observes : ""We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the enoroachment for his own benefit."" This is also the view enunciated in, the later case of *Ishan Chandra Mitter V. Raja Rama Ranjan Chakerbutty* (1905) 2 C.L.J. 125; see also *Maidin Saiba v. Nagapa* ILR (1882) B. 96. Our attention has been drawn to some cases in which it has been stated that the tenant is bound to prove that he set up a right of tenancy over the encroached lands to the knowledge of his landlord *Wali Ahmed Chowdry v. Totah Meah Chowdhry* ILR (1903) C. 397; *Krishna Govinda Jawadar v. Banka Behari Saha* (1909) 13 C.W.N. 698. See also *Prohlad Teor v. Kedarnath Bose* ILR (1897) C. 302 where Maclean C.J. was of opinion that the rule laid down by Matkby J. was stated in too broad terms. In *Wali Ahmed Chowdhry v. Totah Meah Chowdhry*, the encroachment was on waste land and the acts of enjoyment might be held not to amount to effective possession. These decisions might be perfectly right on the particular facts on which they were passed, but if they intend to lay down that a tenant-trespasser is, as a matter of law, bound to prove that his trespass was known to his landlord, we must say that we prefer the rule laid down by Markby J. We can see no basis, for a presumption that a tenant when he encroaches on his landlord's lands intends to hold possession purely for the benefit of the landlord. We are, therefore, of opinion that on the finding arrived at by the District Judge the plaintiffs must

fail. We may add that it is almost impossible to believe that during the period of about 30 years that the defendants were cultivating the lands prior to 1904, their landlords were ignorant of the fact. The result of the finding is that the decrees of the lower courts must be reversed and the suit dismissed with costs throughout.