

(1913) 12 CAL CK 0007
In the Calcutta High Court

Nawab Ali

APPELLANT

Vs

Maharajah Birendra Kishore Monikya Bahadoor

RESPONDENT

Date of Decision : 19-12-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 103

Citation : AIR 1914 Cal 866(2) : 24 Ind. Cas. 424

Hon'ble Judges : Beachcroft, J; Asutosh Mookerji, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendant in a suit for assessment of rent of a tank in his occupation. The case for the plaintiff is that the defendant is a tenant of some land within his zemindari and has taken possession of this land for which he is liable to pay rent. The defendant pleads that the tank was excavated by his grandfather that the property descended to his father, and has been in his possession for many years, and neither his grandfather nor his father nor he himself ever paid any rent for the tank, which is held under a rent-free grant. He further alleges that he had heard from his father that a lump sum was paid to the zamindar at the time when this rent-free grant was obtained. The defendant also asserts, in the alternative, a title by adverse possession for much longer than the statutory period. The Court of first instance found that from the nature of the land, the exclusive possession of the defendant and his predecessors, the non-payment of rent and the assertion of a rent-free title more than twelve years before the commencement of the suit during the pendency of settlement proceedings, the only inference which could legitimately be drawn was that the defendant held under a rent-free grant. The Court also found that the possession of the defendant had been adverse to the plaintiff and that consequently the claim for assessment of rent was barred by limitation. In this view the suit was dismissed. Upon appeal the Subordinate Judge has held that the claim for assessment of rent is not barred by limitation, and he has assessed what he considers to be fair rent in respect of the tank.

2. The defendant has now appealed to this Court and on his behalf it has been contended that the view taken by the Subordinate Judge upon the question of adverse possession is erroneous. In the view we propose to take, it is not necessary to examine the grounds upon which this decision is based. As the Subordinate Judge has omitted to consider the fundamental question in the case, namely, whether the defendant holds the land under a rent-free grant, we have dealt with the case u/s 103 of the CPC and examined the evidence on the record. The defendant, who is fifty-five years old, has testified that he has been in possession of the tank ever since he came of age, and he has brought forward a witness who pledges his oath that he has seen the defendant in occupation for about 45 years. His possession consequently must be taken to have extended for over 40 years.

3. He further asserts that the tank was in the occupation of his father and grandfather. We may take it, therefore, that the defendant himself and his father were in possession for a long series of years, and there is no reason to distrust his testimony that his father and grandfather before him were in possession of the tank. It is nowhere suggested that rent was at any time paid by the defendant or his predecessor for occupation of the tank. The plaintiff asserts that the land was originally mal or rent-paying : of this there is, however, no evidence on the record. But if it is assumed that the land was at some time rent-paying, the fact that no rent has been claimed or realized in respect of the land for more than half a century indicates that there must have been some good reason for it. The explanation which the defendant offers is very probable, namely, that the tank was excavated by his grandfather and that money was paid to the landlord to obtain a rent-free title. The Subordinate Judge has referred to the fact that the defendant is in occupation of another tank for which he pays rent. This, in our opinion, supports the case for the defendant that the disputed tank, for which no rent has been claimed or paid, is held under a rent-free grant. The landlord has consequently the choice of two alternatives. If the land was initially mal and has ceased to be rent-paying for a long series of years, the fact calls for explanation : none has been suggested on the side of the plaintiff, while that offered by the defendant is satisfactory. If on the other hand, the land was never mal, the possession of the defendant and his predecessors for upwards of half a century, has been prima facie adverse, and has extinguished the title of the plaintiff. We are of opinion that this is pre-eminently a case for application of the well-recognised principle that a rent-free grant may reasonably be inferred from long possession without payment of rent [Bissonath Komilla v. Brojo Mohun Chuckerbutty 10 W.B. 61 : 1 B. L.K.S.N. 2. Radha Gobind Doss v. Prokash Chunder Doss 14 W.R.108.].

4. The result is that this appeal is allowed, the decree of the Subordinate Judge set aside and that of the Court of first instance restored.

5. This order will carry costs both here and in the Court of Appeal below.