

(1927) 12 CAL CK 0016
In the Calcutta High Court

Nisi Kanta Das and Others

APPELLANT

Vs

Brojendra Nath Pal and Others

RESPONDENT

Date of Decision : 12-12-1927

Acts Referred:

Bengal Tenancy Act, 1885 — Section 103(A)

Citation : AIR 1928 Cal 298

Hon'ble Judges : Mukerji, J; Duval, J

Bench : Full Bench

Judgement

Mukerji, J.—This appeal arises out of a suit which WAS instituted by the plaintiffs for declaration of title to and for confirmation of possession in or, in the alternative, for recovery of possession in respect of, an eight annas share in a tank and its bank. The suit was dismissed by the trial Court, that Court holding that the plaintiffs had failed to make out their title and that they had not been in possession, at any time, of the property in suit before the suit was instituted. The lower appellate Court, on an appeal being preferred by the plaintiffs from the aforesaid decision, reversed the said decision and decreed the suit in plaintiffs' favour holding that the plaintiffs had succeeded in proving their title and also that the suit was not barred by limitation. The plaintiffs' case, shortly stated, was that the tank in question belonged originally to two brothers Nilmani Ray and Madhuradhan Say in equal shares. The plaintiffs claimed to have acquired the eight annas share of Madhusudhan Ray and Nilmani Ray's share, according to the plaintiffs, devolved upon the contesting defendants. The arguments that have been advanced in support of this appeal which has been preferred by the defendants may be classed under two heads. The main arguments have been directed toward the finding of the learned Additional District Judge on the question of the plaintiff's title. It would be tedious to set out in detail all that has been urged so far as this branch of the appellants contention is concerned. It has been urged, for instance, that the attention of the lower appellate Court was directed more to the question of the superior right in the tank and that the findings that have been arrived at by that Court in plaintiffs favour really related

to the said superior right, while, in point of fact, the subject matter of the suit was the jote right in the said property. It has been also urged that certain important documents or rather the bearing of them, so far as the present case is concerned, have not been properly considered by the learned Additional District Judge and in this respect reference has been made to such documents as Exs. N1 and D1. It has been also contended that there is an inconsistency in the findings of the learned District Judge so far as Exs. 7A and D2 are concerned; because while the learned Judge has said that D2 does not relate to the property in suit, he has relied upon Ex. 7A which gives the same pottah number of the property as D2 contains.

2. These and various other matter have been brought to our notice but having given to all these matters the consideration that they deserve, we are of opinion that the learned Additional District Judge has very elaborately discussed the bearing of all the relevant documents and arrived at a conclusion with which it is not possible for us to interfere in second appeal. As regards the jote right, it is clear that there are some documents which deal with the said right and the findings of the learned Additional District Judge, so far as this right is concerned, cannot be said to have been based, on no evidence. As regards D1 and N1 they have been specifically referred to is the learned Additional District Judge's judgment and as regards 7A and D2, the argument proceeds merely upon the fact that the same pottah number is given in. the two documents : while, on a careful consideration of these documents, it will be clear that there are other matters mentioned which go to show that the properties to which they relate are not identical. This contention, directed against the question of the plaintiffs' title, must, therefore, be overruled. The finding that the plaintiffs' title to the eight annas share of the tank and its banks will accordingly stand.

3. The other arguments that have been advanced relate to the question of limitation and generally to the finding of the learned District Judge as regards the question of the plaintiffs' possession. The learned Additional District Judge has observed in his judgment that the record-of-rights was finally published on the 27th October 1910, and, inasmuch as the suit was instituted on 27th October 1922, it was not time barred. He has made the following further observation in his judgment:

I believe plaintiffs' evidence of possession up to the final publication of the record-of-rights. It is true that the defendants are in possession since the final publication of the record-of-rights as told by some of the plaintiffs' witnesses.

4. He seems, therefore, to have been of opinion that inasmuch as the suit was instituted within 12 years from the date on which the record-of-rights was finally published and as upon the evidence he was able to come to the conclusion that the plaintiff was in possession up to that date and the defendants came to be in possession only after the record-of-rights was finally published; therefore, the suit was within time. The whole of the reasoning taken together if it can at all be accepted may perhaps be considered sufficient to dispose of the question of

limitation and also the question of the plaintiffs' possession. But there is an initial difficulty in accepting this reasoning which has been given by the learned Judge. It appears that although the record-of-rights was finally published on the 27th October 1910, on 8th January 1909, an order was passed by the revenue authorities on a dispute in proceedings taken u/s 103(A), B.T. Act, that the name of the second party alone, that is to say, of the defendants in the present suit was to be recorded in the whole of the Nisf No. 4870 to which the subject-matter of the suit relates. The presumption u/s 103, Clause (B) B.T. Act, no doubt attaches to the record-of-rights when it is finally published; but it cannot be disputed that the order passed by a revenue officer directing the name of a particular person to be entered in respect of a certain property is a very valuable piece of evidence on the question of possession so far as that party is concerned. This entry which is Ex. 24 in the case does not appear to have been considered by the learned District Judge; because wherever he has referred to the entries in the settlement records, he has referred only to the records finally published. I am of opinion that in arriving at his finding on the question of possession, the learned Additional District Judge, in having ignored this very important piece of evidence which is on the side of the defendants and in relying entirely upon the oral evidence of possession that is on the record and which must necessarily be of a far less evidentiary value, has not dealt properly with the case.

5. I am, accordingly, of opinion that while the findings of the learned Additional District Judge on the question of the plaintiffs' title must be taken to be final and will not be allowed to be reopened here, his decision on the question of plaintiffs' possession and on the question of limitation will have to be set aside and the case sent back so that the latter questions only may now be dealt with afresh on hearing the parties again with reference to the materials on the record.

6. The appeal is thus allowed and the case remanded to the lower appellate Court to be dealt with in the light of observations made above.

7. Costs of this appeal will abide the re-suit of the remand.

Duval, J.

8. I agree.