

(1908) 04 CAL CK 0011
In the Calcutta High Court

Nityananda Hazra and Others

APPELLANT

Vs

Bakkeswar Ta and Others

RESPONDENT

Date of Decision : 07-04-1908

Acts Referred:

Citation : 3 Ind. Cas. 399

Hon'ble Judges : Sharfuddin, J; Rampini, J

Bench : Division Bench

Judgement

1. This appeal is against a decision of the Additional Subordinate Judge of Burdwan dated the 20th March 1906. The appeal arises out of a suit brought by the plaintiffs for joint khas possession with the defendants as owners of 9 annas odd gun da share in a tank. Some of the defendants assert that the disputed land was Chowkidari Chakran land and that such portion of it, as was not Chowkidari Chakran land, was leased, out by them to defendants Nos. 5, 6 and 7 who have been in occupation since a portion of the land in dispute silted up in the year 1308.

2. The learned Subordinate Judge has dismissed the suit. He has held, following the ruling in Madan Mohun v. Rajab Ali 28 C. 223 that the suit cannot proceed; and, secondly", that as the Chakran Commissioner has declared 1 1/2 bighas to be Chowkidari Chakran land and has resumed this area of land, the suit cannot proceed because the plaint does not contain any prayer for setting aside the order of the Commissioner.

3. The plaintiffs appeal and it has first been contended on their behalf that the ruling in Madan Mohun v. Rajab Ali 28 C. 223 is no authority for holding that a suit like the present shall not proceed; and secondly, that the Chakran Commissioner's decision relates only to 2 bighas of the tank with a rent of three annas, whereas the tank is in area 50 bighas, and because the Chakran Commissioner has declared 1 1/2 bighas of the tank to be Chakran land, this is no reason why the suit should not proceed with respect to remaining 48 1/2 bighas. We think that these pleas must prevail The ruling in Madan Mohun v.

Rajab Ali 28 C. 223 appears to us to have no application whatever. That was a case in which a co-sharer landlord in exclusive possession of a waste plot of land with the permission of the other co-sharers had leased it out to a tenant who improved it without any objection on the part of the other co-sharer landlords and it was held that it was not open to the latter to obtain khas possession of the land so improved jointly either with the lessor or with the tenant. But the facts of this case are quite distinct from the facts of that case. In this case the land, which has silted up, has been leased out by the defendants only since 1308 and so within three years of the institution of the suit. There is, therefore, no bar of limitation. Then the lessees of the defendant landlord have not in any way improved the silted up portion of the tank. The defendants only proceeded to cultivate it and the plaintiffs in this case have never stood by and allowed the defendants to improve the land or to do anything which would render it inequitable for the plaintiffs to obtain khas possession of the land. It appears to us that the cases of *Radha Proshad Wasti v. Esuf* 7 C. 414 : 9 C.L.R. 76 and *Snrendra Narain Sinha v. Hari Mohan Misser* 33 C. 1201 are authorities for holding that a suit of this nature can proceed.

4. Then with regard to the second ground of appeal it is quite clear that the Chakran Commissioner resumed only 1 1/2 bighas of land. He never meant to resume the whole of the land. It is true that the boundaries of the land which he resumed may apply to the whole of the tank but the learned Pleader for the respondent has given us details of the boundaries of the land in dispute in this case and the description of plot No. 10 which was resumed by the Chakran Commissioner. They appear to differ considerably. But, however, that may be, it is quite impossible to suppose that the Commissioner who resumed 1 1/2 bighas of the area of the tank at a rental of three annas, which was at the rate of 2 annas per bigha, resumed the whole of the 50 bighas which comprise the area of the tank. That being so, there is no reason why the plaintiff should not succeed with regard to the remaining 48 1/12 bighas. It is true that the plaintiffs have not located the 1 1/2 bighas but they say that it is not necessary for them, to do so, seeing that they have not asked for exclusive possession of the land but joint khas possession of the land in dispute, excluding the 1 1/2 bighas of Chakran land. We, therefore, see no reason why the suit should not proceed. We, therefore, set aside the decree of the lower appellate Court and remand the case to that Court to be decided on the other issues. Costs will abide the result.