

(1921) 02 CAL CK 0021
In the Calcutta High Court

Parbati Majhi and Another

APPELLANT

Vs

Digpati Majhi and Surja Kumar Majhi and Another

RESPONDENT

Date of Decision : 22-02-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Evidence Act, 1872 — Section 13

Citation : 64 Ind. Cas. 465

Hon'ble Judges : Cuming, J;Buckland, J

Bench : Division Bench

Judgement

1. Three points have been argued in this appeal. The first is that the question of adverse possession, which was taken in the lower Appellate Court, was not taken in the first Court. With regard to this, we can only say that the point was raised in the plaint. It was mentioned in the written statement and was comprised in the very general issues which were settled. If the defendants have any complaint to make with regard to this, it is due to the fact that they did not ask the Court to settle the issues in a more precise form and raising a question of fact. We do not think there is any substance in this objection.

2. The next point which has been argued is that the learned Judge of the lower Appellate Court has wrongly admitted in evidence in particular, a partition deed between the ancestors of the plaintiff and the defendants Nos. 1, 2 and 3 and also a judgment and decree in a suit between the predecessor of the defendant No. 4 as plaintiff and the predecessor of the defendants Nos. 1, 2 and 3 as defendant. We think that the point that has been argued is concluded by the latest judgment of the Judicial Committee of the Privy Council to which we have been referred, viz., the case of Dinomoni Chowdhurani v. Brojo Mohini 29 C. 187 : 29 I.A. 24 : 6 C.W.N. 886 : 12 M.L.J. 83 : 4 Bom. L.R. 167 : 8 S. P.C.J. 224. That was a case of admissibility of an order u/s 145, Criminal Procedure Code, and their Lordships said this: "These Police orders are in their Lordships' opinion admissible in evidence on general principles as well as u/s 13 of the Indian Evidence Act to show the fact that such orders were made. This necessarily

makes them evidence of the following facts, all of which appear from the orders themselves, viz., who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession, For this purpose and to this extent such orders are admissible in evidence for and against every one when the fact of possession at the date of the order has to be ascertained," We think that this covers the present case so far as it relates to the proceedings in the previous suit. To the partition deed the plaintiff in these proceedings was not a party. The defendants Nos. 1, 2, 3 and 4 who were parties, have not that objection open to them. We think that both these documents are admissible and that the learned Judge was justified in placing reliance upon them. What probative force they have, is a matter for the lower Appellate Court; and reading the judgment of the learned Subordinate Judges, it does not appear that in point of fact he placed very much reliance upon them on the question of possession. But that is not a matter for us in second appeal.

3. The last point which has been argued is, that there can be no decree for damages against the first defendant on the ground that he is a co-sharer of the plaintiff. The contention on behalf of the plaintiff is that there has been a complete ouster by the said defendant and, therefore, though he is a co-sharer, he is entitled to damages. We think that the findings of the lower Court are sufficient to justify the order passed.

4. The appeal, therefore, is dismissed with costs.