

(1921) 12 CAL CK 0009
In the Calcutta High Court

Radha Krishna Das

APPELLANT

Vs

Matiyar Rahaman and Others

RESPONDENT

Date of Decision : 06-12-1921

Acts Referred:

Citation : 65 Ind. Cas. 743

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The only question involved in the appeal is, what is the boundary line between the tenure of the plaintiff and that of the defendant. The tenures are situated side by side.

2. The Courts below have held that the plaintiff has failed to prove title and possession of the land.

3. On behalf of the appellant, reliance is placed on the case of Lukhi Narain Jagadeb v. Jadu Nath Deo 21 C 504 : 21 1. A. 39 : 6 Sar. P.C.J. 408 : 10 Ind. Dec. (N.S.) 966 where it was held that "on questions of boundary, specially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession, the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter claimants and both parties are bound to do what they can to aid the Court in ascertaining the true line".

4. But the duty of both parties to aid the Court in ascertaining the true line is in case where the dividing line in dispute runs through waste lands which have not been the subject of definite possession. In the present case, it was the case of both parties that the land was capable of possession and each party was in actual possession of the land comprised within his tenure. That being so, the principle does not apply to the present case. In this connection, we may refer to the case of Manindra Chandra Nandi v. Sarabindu Ray 45 Ind. Cas. 408 : 27 C.L.J. 599 : 23 C.W.N. 593 where it was pointed out that, when the defendant in

a suit for recovery of possession of land, even when the question is a question of boundaries, is clearly shown or found to have been in actual possession of the disputed area, the burden lies on the plaintiff to establish his title.

5. In the present case it is found that the defendant has been in possession all along up to the line found by the Court below and that has always been the dividing line between the two tenures, That being so, the contention has no force.

6. The learned Pleader for the appellant next relies upon certain statements made by defendant No. 11, the contesting defendant, and it is contended that the plaintiff is entitled to a portion of the land according to the admission of the defendant. There was however, no admission of the title of the plaintiff, or of the boundary line. On the other hand, there was a clear denial. There was, however, a statement as to how many nals of land intervened between the plaintiff's and defendant's land. It was stated in the written statement that the distance between the lands was no less than 20 nals, and in the evidence it was stated to be about 20 or 25 nals. The learned Judge pointed out that it was a statement by guess and not made by actual measurement. In the circumstance, the learned Judge did not attach any weight to the statement.

7. We think the learned Judge was right and the appeal must be dismissed with costs.