

(1869) 05 CAL CK 0059
In the Calcutta High Court
Case No : Special Appeal No. 2742 of 1868

Raja Rash Bihari Lal Sing

APPELLANT

Vs

Nabayi Paddar and Others

RESPONDENT

Date of Decision : 10-05-1869

Acts Referred:

Citation : (1869) 05 CAL CK 0059

Judgement

L.S. Jackson, J.—In this case three grounds of special appeal have been urged before us. The first of them is, that the plaintiff having failed to establish the particular title under which he sued, ought not to have had a decree; secondly, that the lower appellate Court was wrong in taking the dakhilas put in by the plaintiff in that Court as evidence, inasmuch as they were neither proved nor admitted; and thirdly, that the oral and other evidence in the case were insufficient to justify the decree passed. The plaintiff alleged, that upon the Raja whom he made a pro forma defendant in this suit desiring to reclaim a portion of waste land, the plaintiff undertook to do it, and commenced clearing a portion of the land and putting up an embankment, and thereupon the Raja gave him a sanad to hold that land at a quit-rent of two rupees per annum, and also to cut and use jungle thereon; not afterwards the principal defendants commenced a dispute with him about this jungle land, and cut down some jungle therein, and dispossessed him of the land on the eastern side of his grant; that he had made a complaint on this subject to the police authorities who referred him to a civil suit, and consequently he sued to recover possession of the land in question, and for damages that he valued at 5 rupees, the land being valued at 15.

2. The Munsiff dismissed the suit; but on appeal the Deputy Commissioner, who is also Subordinate Judge, reversed that decision and gave judgment for the plaintiff to the full amount of his suit. It may be observed however that the decree itself only orders the plaintiff to be replaced in possession of the land, being silent as to damages, and also awards him costs.

3. The first ground of appeal above mentioned proceeds on the circumstance that

the plaintiff did not prove the sanad mentioned in the plaint to the satisfaction of the lower appellate Court; and it is contended that as the sanad itself was not proved, the particular title depending on that sanad must fail, and the suit ought to have been dismissed.

4. We are referred to some cases, Shiv Dyal Puri v. Thakur Mahabir Prasad 2 B.L.R. App. 8 and Ramdhan Chuckerbutty v. Srimati Komal Tara See 3 B.L.R. A.C.J. 99, Note, ante. In which it was held that the particular title set up by the plaintiff being unproved, he would not be entitled on proving mere possession to a decree as under the particular title claimed. That ruling I think quite correct. But it is one thing to say that a party must prove the particular title which he sets up, or that mere possession will not prove a particular title, as for instance, possession will not prove a mokurari title; but it is quite another thing to say that a party who claims to hold land by a grant, such grant being evidenced by a sanad, and then fails to prove the execution of the sanad itself, may not prove the same grant by other means.

5. But it is to be observed also in this case, that the decree complained of does not declare the plaintiff entitled to hold the land in dispute on any particular terms, or for any particular time. It merely orders him to be replaced in possession of the same with costs of suit. It seems to me, that the Court below might lawfully and regularly give such a decree, although the plaintiff failed to prove the execution of his sanad.

6. Then as to the evidence of possession consisting of dakhilas put in the lower appellate Court, it is contended that these dakhilas were never proved, and we are asked to assume that the Judge has accepted those dakhilas simply on their being produced by the plaintiff in his Court, either without admission by the defendant, or in spite of his remonstrance. I think we ought not to assume that the Judge has done either the one or the other. In a case of this sort, where the appellant is really aggrieved by the conduct of the lower appellate Court, we should expect him to satisfy us that he had taken the objection to the reception of the papers; that he had protested against their being received, and that they had been received in spite of his protest.

7. I therefore think that the decision of the lower appellate Court is right, and ought to be affirmed with costs.

Markby, J.

8. I am of the same opinion. I think the distinction between this case and the cases Shiv Dyal Puri v. Thakur Mahabir Prasad 2 B.L.R. App. 8 and Ramdhan Chuckerbutty v. Komal Tara See 3 B.L.R. A.C.J. 99, Note, ante is quite clear. There the plaintiff was seeking to have declared in his favour a particular kind of right, in one case a mokurari tenure, and in the other case a particular kind of talookdari right, and of course the very essence of each of those cases was that the plaintiff should show the existence of that particular right before he could have it declared in his favor. But in this case, the plaintiff seeks for no declaration

at all. He only asks to be put into possession; and I observe that the learned Judges who decided the case of Ramdhan Chuckerbutty v. Komal Tara See 3 B.L.R. A.C.J. 99, Note, ante expressly recognize the principle that possession may be evidence of title.

9. I may observe also that so far as relates to the objection that the plaintiff did not prove the particular title which he alleged in his plaint that it was quite unnecessary for the plaintiff to state in his plaint what his title was. The precedent as given for plaints in the CPC for cases like the present does not set out title; and the plaintiff having done so was not bound by it, but having brought his suit for possession, it was I think open to him to prove by possession a title sufficient to recover against the defendant. As to the other objection, I think the rule which has been acted upon, at least since I have sat on this Bench, is the right one, namely to presume that the lower Court has done its duty: and if a vakeel takes upon himself to say that he has not done so, he must give something tangible, something more than mere suggestion before he can induce us to interfere. In most cases however as in this, vakeels do not even go so far as to assert on their own responsibility that the lower Court has committed the error of which they complain.

(1) Before Mr. Justice Bayley and Mr. Justice Hobhouse.

Ramdhan Chuckerbutty (Plaintiff) v. Srimati Komal Tara (Defendant). *

[3rd April, 1869.]

Unless a plaintiff can prove the particular title set up by him, he is not entitled to decree.

Baboos Ramesh Chandra Mitter and Nalit Chandra Sen, for appellant.

Baboo Srinath Banerjee, for respondent.

JUDGMENTS.

Hobhouse, J.--In this case the plaintiff alleged that there was a shikmi talook called Ramjai Pal; that on the 2nd Falgoon 1244 he had purchased from the proprietors of that talook one drone of land within the talook, and that under the conditions of his purchase he was what he calls an Agguth Talookdar paying a rental of Rs. 8 to the proprietors. He then went on to state that in execution of a decree against Ram Lochan Pal, a representative of a proprietor of this talook, the defendant special respondent, had purchased the rights of the said Ram Lochan Pal, and under color of an order of Court of 31st July 1866 had dispossessed the plaintiff of the one drone in question.

The defendant denied that the plaintiff was the Agguth Talookdar he alleged himself to be and, stated that the talooki lands in question were the property of Ram Lochan Pal, the judgment-debtor.

The first Court found that the plaintiff had been in possession of the lands since

the year 1244, and inferred from thence that the plaintiff was the Agguth Talookdar he alleged himself to be, and gave him a decree for possession.

By the alleged document of 1244, not the whole of the shareholders, but certain of the shareholders of the talook, purported to convey the lands in question as their share to the plaintiff. It is necessary to state this in order to understand correctly the reasoning of the lower appellate Court's decision. That Court says that it cannot give the plaintiff a decree. First of all it says that it cannot give him a decree because it is not proved that the sharers in the talook who were said to have conveyed the land to the plaintiff, held those lands in separate portions. Neither can the appellate Court, it says, give the plaintiff a decree as an Agguth Talookdar, because the plaintiff's vakeel points out to him that the plaintiff does not now call himself an Agguth Talookdar but a sharer in the original talook. Neither, the appellate Court says, can it give plaintiff a decree as a talookdar having a share in the talook, because the Court does not find any proof as to the extent of the share. Neither, the appellate Court says, can it give the plaintiff a decree as an independent talookdar, for that is not his position; and in conclusion the Court says, that in this case it finds no evidence as to the creation of an Agguth Talook, nor any evidence as to the plaintiff's having purchased any such specific shares in the talook as entitled him to a decree. The lower appellate Court therefore dismissed the suit with costs.

In special appeal there is in reality but one contention before us, and it is this, viz., that when there was evidence on the record that the plaintiff had been in possession of the lands in dispute in some one capacity or other for a period of something like 32 years, it was incumbent on the lower appellate Court to replace the plaintiff in that possession unless the defendant could show a better title under which he could keep the plaintiff out of such possession.

A great number of the precedents of this Court and of the Court of the Judges of Her Majesty's Privy Council has been quoted to us on the question of possession, and the effect of these precedents seems to us to be that other things failing, possession is a good evidence of title, unless some better evidence is shown, and we are not prepared to dissent from this proposition; but the question is, it seems to us whether it can be applied to the present case, and we are of opinion that it cannot. In this case the plaintiff did not come to Court on the ground simply of previous possession of the lands in dispute, but come to Court upon a distinct and a definite title, and had that title been proved, had the plaintiff been put in possession under it, the effect of the decree would have been that the plaintiff would have been tenant of the lands in dispute paying a quit rent to the defendants representing the talookdars, and nothing more; and under no liability to have his rents increased. Unless therefore the plaintiff was able to prove the case which he set up, we think he was not entitled to a decree, and he entirely failed to prove that case. He produced a document of the year 1244, but he did not show whence that document came from, in whose custody it had been, and how he became possessed of it, nor did he even swear that he even became

possessed of it himself. Neither did he prove that he had been in possession of the lands in dispute under the title of Agguth Talookdar which he set up, for the very persons who professed to have paid rents for the lands to the plaintiff did not know the capacity in which the plaintiff received those rents, and the plaintiff himself ignored his own title, and endeavoured at the last moment, before the lower appellate Court to set up an entirely different title; and further we think it is quite clear from the records of the case that the plaintiff did not, before the lower appellate Court, set up the mere fact of a possession of some kind as giving him a title to a decree, but set up only and distinctly a possession of a particular kind which it is admitted, and it is found he was altogether unable to prove.

We think therefore that whatever may be the legal effect of previous possession in suits generally, the plaintiff in this particular instance could not, and indeed did not, set up that general possession upon which it is urged by his pleader before us now, that we ought to direct the Court to give him a decree, if on remand the Court should find on evidence on the record the plaintiff had proved merely a general possession.

We dismiss the special appeal with costs.

* Special Appeal No. 2867 of 1868, from a decree of the Judge of Tipperah, dated the 21st August 1867, reversing a decree of the Principal Sudder Ameen of that district, dated the 17th February 1867.