

(1909) 07 CAL CK 0046
In the Calcutta High Court

Ram Kristo Mohapatra

APPELLANT

Vs

Jagannath Mohaprabu, Idol and Another, Shebait

RESPONDENT

Date of Decision : 09-07-1909

Acts Referred:

Citation : 3 Ind. Cas. 98

Hon'ble Judges : Vincent, J

Bench : Single Bench

Judgement

Vincent, J.—The facts, out of which this appeal arises, are very simple. The plaintiff No. 2 is, as alleged, the shebait of a certain idol, and holds in that character as marfatwar on behalf of the idol certain amrilomonohi lands. He mortgaged these lands to the defendant, in the year 1890, and in execution of a decree obtained in a suit-brought upon that mortgage-bond the defendant bought up the land in the year 1894; in the recent record-of-rights the name of the defendant has been entered as the possessor of the lands. The plaintiff No. 2 now seeks to get the sale set aside and to recover possession of the property with mesne profits on the ground that the land was dabutter and not transferable.

2. The suit has been decreed in both the lower Courts, and the defendant appeals urging the following points:

- (1) that the plaintiff No. 2 is estopped from bringing this suit.
- (2) that the suit is time-barred.
- (3) that the plaintiff is not the shebait of the Temple, and is not, therefore, entitled to sue.
- (4) that the land is not really dabutter land; and finally
- (5) that the defendant is, in any case, entitled to a refund of the money advanced to the plaintiff No. 2 before possession of these lands can be decreed. For an authority that the land is not dabutter I am referred to a report on the

Survey and Settlement of Orissa by Mr. Mod-dax, i. c. s., dated 1900; it does not, however, appear that this re-port was produced in the lower Courts; the question as to the character of these lands can only be decided, on the evidence adduced, and I am content to accept the finding of the lower Court as to the character of the land which appears to be a question of fact. I may state farther that it appears from Mr. Moddax's report that amrito-monolii lands are not alienable.

3. There also appears to be no foundation for the suggestion that the plaintiff is not the shebait of the idol. This point was not raised in the issues and cannot be considered now.

4. The other questions raised by the appellant are, however, of greater difficulty, and on a careful consideration of the evidence and circumstances I think that this appellant must succeed on these points.

5. If it is accepted that the alienation of 1890 was one which the plaintiff No. 2 was not authorised to effect, then from the date of the defendant's mortgage which was an usufructuary one the possession by the defendant was adverse to that of plaintiff No. 1, and as that possession commenced more than 12 years ago, it follows that the defendant has acquired a title to occupy these lands by 12 years' adverse possession. The case of Shama Charan Nandy v. Abhiratn. Goswami 33 C. 511 : 3 C.L.J. 300 : 10 C.W.N. 738 may be cited as an authority for the proposition that in such circumstances a title can be acquired by adverse possession. The same view has been taken in the case of Ram Kanai Ghose v. Raja Sri Sri Hari Narain Singh Deo Bahadur 2 C.L.J. 546 and Jnananjan Banerjee v. Adoremoney Dassee 13 C.W.N. 805 : 3 Ind. Cas. 93 (ante). The date of the mortgage was the 16th June 1890. From that date up to the 15th February 1906, the defendant's possession continued uninterruptedly. By this possession the defendant has obtained a good title, and it follows, therefore, that he cannot now be ejected.

6. I am also of opinion that the suit must fail as the conduct of the plaintiff No. 2 has been such as to estop him from making allegations as to the inalienable character of the lands in the manner set forth in the plaint, in its present form. He induced the defendant to advance money to him on the allegation that the property in suit was alienable and he cannot now be permitted to come forward and state that the property was inalienable, and seek for recovery of possession of the same. It is said that he now sues in a capacity different from that in which he executed the deed; but this is clearly a mere quibble and no weight attaches to such an argument : nor can the aid of Courts of Justice in this country be invoked to assist a fraudulent plaintiff in the manner desired in this suit. It follows from these findings that this appeal must be decreed, and the plaintiffs' suit be dismissed with costs in all the Courts.

7. I am, further, of opinion that, even if the suit had not been dismissed for the reasons stated above, the plaintiffs would have been in equity bound to make

good to the defendant any sums advanced by him, before possession of the property could be delivered to the plaintiffs inasmuch as it appears that much, if not all, of the money advanced by the defendant was taken for the benefit of the idol. In support of this view, the case of Konwar Durganath Roy v. Ram Chunder Sen 2 C. 341 : 4 I.A. 52 may be cited. Indeed, it is open to doubt, if the alienation being made apparently for the benefit of the idol was not a valid one. In the view I take, however, of the case, it is not necessary to discuss this question at length.