

(1925) 03 CAL CK 0013
In the Calcutta High Court

Year Mamud Mondal

APPELLANT

Vs

Paomocha Sarkar and Others

RESPONDENT

Date of Decision : 26-03-1925

Acts Referred:

Specific Relief Act, 1877 — Section 9

Citation : AIR 1925 Cal 1225

Judgement

1. This appeal arises out of a suit for khas possession of a fishery after establishment of the plaintiff's title to it. The plaintiff's case was that he was in possession of this fishery for some time, and after the expiry of the previous jama in Kartick 1319, he applied for a fresh jama for 10 years, which was granted by what he called a likhan, dated the 2nd Magh 1319. It is alleged that the defendant subsequently dispossessed him from the fishery in Pous 1326 and hence this suit.

2. Both the Courts below have dismissed the plaintiff's suit on the ground that the likhan on which he based his title was really a lease for 10 years and, therefore, it was necessary that it should be registered; and as it was unregistered it conferred no title on the plaintiff; he was, therefore, incompetent to sue for recovery of possession from the defendants. No evidence was taken in this case in the Courts below.

3. Two points have been raised in this appeal: first, that the likhan which the lower Courts treated as pottah is in the nature of an amalnama and, therefore, it is not compulsorily registrable. On this point we had the document placed before us and we agree with the Courts below in holding that this document is a lease granting 10 years' enjoyment of the fishery and, therefore, as such, it must be registered before it can be used in evidence. The second point is that if the plaintiff is unable to prove his title by the pottah, his tenancy may be proved by other means, namely, by payment to and acceptance of rent by the superior landlord. On this point the findings of the lower Courts are that it does not appear that rent was paid and accepted in the year in which the suit was brought

and that there was no evidence (including the lease or the pottah above referred to) that the plaintiff's title subsisted in the fishery and so the suit was held to be not maintainable. In support of the view urged by the plaintiff-appellant reliance has been placed upon the case of Beni Madhab Christian v. Raj Chandra Pal 14 C.W.N. 141, where it has been held that a tenant who was in possession of the land under an invalid lease is entitled to recover possession from a mere trespasser. This view has not been uniformly accepted by this Court. So far as that case lays down that a tenancy or relationship of landlord and tenant may be proved by means other than the written lease, the principle of law has been accepted, but when It says that "'a plaintiff in ejectment must, of course, prove his title but here it was not necessary for the plaintiffs to establish their mokarrari lease for their bare possession was a sufficient title against the appellants," the subsequent cases refused to follow it. In Manik Borai v. Bani Charan Mandal [1911] 13 C.L.J. 649, Mookerjee, J., commenting on this case, observed as follows: "We must not, however, be taken to express any opinion as to the other ground mentioned in the judgment [in the case, of Beni Madhab Christian v. Raj Chandra Pal 14 C.W.N. 141], namely, that as the plaintiff had proved prior possession, bare possession was sufficient title against the defendant trespasser. The learned Judges, when they founded this conclusion upon the decision of the Bombay High Court in Pemraj Bhavaniram v. Narayan Shivaram Khisti [1881] 6 Bom. 215 (F.B.) apparently over-looked that the contrary view had been adopted by this Court in the case of Purmeshur Chowdhry v. Brijjo Lall Chowdhry [1890] 17 Cal. 256, Shama Churn Boy v. Abdul Kabeer 3 C.W.N. 158 and Nisha Chand v. Kanchiram [1898] 26 Cal. 579, in which it was held that mere previous possession does not entitle a plaintiff to a decree for the recovery of possession, except in a suit u/s 9 of the Specific Relief Act which must be brought within six months from the date of dispossession ". In support of this view reference may also be made to the case of Ram Chandra Sil v. Ramanmani Dasi 20 C.W.N. 773 So far as this Court is concerned, it must now be taken to be the settled law that the mere fact of previous possession is not enough to support title in a suit in ejectment even against a trespasser. The case of Beni Madhab Christian v. Raj Chandra Pal 14 C.W.N. 141 may also be distinguished on account of its special feature as there was a finding in it that the "possession of the plaintiffs as such tenants continued until they were ousted by the appellants, and was, for the purposes of this suit, a sufficiently good title against the latter." We are not prepared to follow the case of Beni Madhab Christian v. Raj Chandra Pal 14 C.W.N. 141 in this contention, and we must hold that the document on which the plaintiff relied for establishment of his title and recovery of possession, being not admissible, in evidence, he is not entitled to any relief in this suit.

4. In this view the decree of the lower appellate Court must be confirmed and this appeal dismissed with costs.