

Muhammad Ishaq Vs. Nathu

Muhammad Ishaq Vs. Nathu

SooperKanoon Citation : sooperkanoon.com/477008

Court : Allahabad

Decided On : May-15-1912

Reported in : 16Ind.Cas.342

Judge : Chamier, J.

Appellant : Muhammad Ishaq

Respondent : Nathu

Judgement :

Chamier, J.

1. Baksha and the defendant, Nathu, were tenants of an occupancy -holding. On Baksha's death, which occurred some eighteen years ago, the defendant retained possession of the entire holding, although Baksha had left a daughter, Sahiba. The plaintiff in this case is the son of Sahiba. He alleges that Sahiba, during her life-time, received one-half of the profits of the holding, but the Court below has found that this is not true. The lower Appellate Court has dismissed the suit on the ground that the plaintiff's claim is barred by adverse possession on the part of Nathu maintained for over twelve years. It appears that when Baksha died, his daughter's name was entered on the record as his successor. The learned District Judge appears to have held that the plaintiff's claim was barred simply because the defendant was in exclusive possession and enjoyment of the profits of the holding for more than twelve years. From the language which he has used, I

cannot help thinking that he was not aware of the decision of this Court in *Parbiti v. Ram Prasad* 5 A.L.J. 511 : A.W.N. (1908) 239. In that case, it was found that the plaintiff, Parbati, had not been in possession of the defendant's share of the house for more than twelve years. Stanley, C.J., in the course of his judgment, said: 'It is well settled law that exclusive possession by a co-owner of property which originally had been admittedly joint does not per se amount to adverse possession as against his co-sharers. This certainly is the case where the cosharers are intimately related, as the parties here.' That case was sent back to the lower Appellate Court for a fresh finding on the question of adverse possession. In *Ganga Dhar v. Paras Ram* 29 B. 300 : 7 Bom. L.R. 352 it was held that to constitute adverse possession as between tenants-in-common, there must be an exclusion or an ouster. Ordinarily, sole possession by one tenant-in-common is not evidence of ouster; but sole possession by one tenant-in-common, maintained continuously for a long period without any claim or demand by any person claiming under the other tenants-in-common, is evidence from which' an actual ouster of the other tenants-in-common may be presumed. To the same effect is the decision of the Bombay High Court in *Bandaeharya Swamirayacharya v. Shrinivasacharya* 5 Bom. L.R. 742 where it was pointed out that possession of one tenant-in-common is ordinarily to be regarded as possession of the other; but where the complainant tenant-in-common has been out of possession for a considerable length of time, and other circumstances occur, it may be possible to presume that there has been ouster. Following the decision, of this Court quoted above, I remand the following issue to the lower Appellate Court:

Whether the defendant was in sole possession for upwards of twelve years prior to the suit, and whether such sole possession was, either from the nature of the case or from some act of denial of the rights of the plaintiff, adverse to the plaintiff

2. The Court will take such relevant evidence as the parties may adduce. On return of the finding, ten days will be allowed for objections.