

Jamiruddee Naskar and anr. Vs. Basanta Kumar Roy and ors.

Jamiruddee Naskar and anr. Vs. Basanta Kumar Roy and ors.

SooperKanoon Citation : sooperkanoon.com/851982

Court : Kolkata

Decided On : Jul-14-1927

Reported in : AIR1928Cal47

Appellant : Jamiruddee Naskar and anr.

Respondent : Basanta Kumar Roy and ors.

Judgement :

Cammiade, J.

1. This is an appeal by the defendants in a suit for recovery of possession of six bighas and 15 cottas of land comprised in a tenancy the exact nature of which has not been ascertained by either of the learned Courts below. The plaintiff sued on the allegation that this tenancy was an under-raiyati tenancy, and that the defendants were trespassers who had purchased the interests of the late tenants and had acquired no right by their purchase. The Court of first instance dismissed the suit but the Court of appeal below decreed it. The facts are as follows:

The tenancy had originally been held by one Asmatulla who had several sons and daughters. After Asmatulla's death the tenancy seems to have been held, 'according to the case of both parties, by two of Asmatulla's sons, Samiruddi and Kobbani. The first defendant is another son of Asmatulla and the second defendant; is a grandson by another son; and these two defendants purchased the tenancy from Samiruddi and Kobbani by two decrees, one of the year 1310 and

the other of the year 1S12B. Section The plaintiff had granted rent receipts to the defendants from so far back as 1312 showing them as marfatdars. The suit for ejectment was instituted in 1920 corresponding to 1327 B.S. so that the defendants had been paying rents to the plaintiff for 15 years at least before the institution of the suit. The learned Subordinate Judge in decreeing the suit held that, although the plaintiff had been receiving the rent from these defendants from so far back as the year 1312, because these defendants were members of the family of Asmatulla, the plaintiff was not aware till quite recently, that is to say, within 12 years from the date of the suit, that the defendants were claiming, to hold the land by virtue of their own title. The Court of first instance found in so many words that the defendants had been in possession from the time of their purchase. Although that finding, is not reproduced in express terms in the judgment of the appellate Court still the wording of that judgment shows that that finding was accepted and that the Subordinate Judge was of opinion that the mere fact of possession and assertion of title for a period of more than 12 years did not confer title on the defendants because the plaintiff was not aware of the assertion of such title.

2. This matter has been discussed in the case of *Prohabati Dasi v. Taibaturinessa Chaudhurani* [1913] 17 C.W.N. 1088 and in *Panchkari Chattapadhyaya v. Maharaj Bahadur Singh* [1915] 19 C.W.N. 136. In both these cases it has been said that the knowledge or want of knowledge on the part of the landlord was perfectly immaterial in regard to the question of acquisition of a limited interest in property by adverse possession, and that a landlord as against whom a person has been asserting tenant-right cannot repudiate the other man's interest unless he can prove that he was fraudulently kept out of knowledge of the assertion of the title by the other man. It is only by invoking the aid of Section 18; Limitation Act, that the landlord can avoid the effect of possession and assertion of title by a third person claiming, the interest of a tenant on the land. It is obvious that if a person occupies the land for a period of 12 years he may acquire, if he so chooses, an absolute interest in the land, and it is only because he chooses to assert only a limited interest that he acquires only such limited interest. Therefore, whether the landlord chooses to make himself acquainted with the facts that the man in possession asserts his own title to the land or not limitation will run against

the landlord. In these circumstances the decision of the first Court must be upheld. The decision of the Subordinate Judge is reversed, and that of the Munsif is restored with costs in all the Courts.

Cuming, J.

3. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com