

**Hur Pershad Singh and ors. Vs. Dharm Singh and ors.**

**Hur Pershad Singh and ors. Vs. Dharm Singh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/852961](http://sooperkanoon.com/852961)

**Court :** Kolkata

**Decided On :** Aug-10-1885

**Reported in :** (1885)ILR12Cal38

**Judge :** Field and; O'Kinealy, JJ.

**Appellant :** Hur Pershad Singh and ors.

**Respondent :** Dharm Singh and ors.

**Judgement :**

**Field, J.**

1. The question argued in this case is one of limitation. It has been pressed upon us that the Judge in the Court below has disposed of the question of the plaintiffs' possession within twelve years with reference only to the presumption arising from the title which the Judge found to be in the plaintiffs. Now if the Judge had pursued this course, he would undoubtedly have been wrong. But beyond all doubt there is positive evidence of the plaintiffs' possession upon the record-evidence to which the Subordinate Judge very distinctly alludes; and it must be borne in mind that the Judge was confirming the judgment of the Subordinate Judge. We think then that what really was done is this: There was evidence of possession on both sides, and the Courts below preferred the evidence given by the plaintiffs, because it accorded with the title which was found to be in the plaintiffs. In doing so, that is in taking this course, they have followed the principle laid down by the Privy Council

in the case of *Runjeet Panday v. Goberdhun Ram Panday* 20 W.R. 25 a case the facts of which are very similar to those of the present case. Their Lordships of the Privy Council there said: 'In the midst, therefore, of this conflicting evidence, their Lordships think it right to consider whether there is any presumption to be derived from the other parts of the case in favour of the one side or the other. Now the ordinary presumption would be that possession went with the title. The presumption cannot, of course, be of any avail in the presence of clear evidence to the contrary; but where there is strong evidence of possession, as there is here on the part of the respondents, opposed by evidence, apparently strong also, on the part of the appellant, their Lordships think that, in estimating the weight due to the evidence on both sides, the presumption may, under the peculiar circumstances of this case, be regarded; and that with the aid of it, there is a stronger probability that the respondents' case is the than that of the appellant.'

2. We see, therefore, no reason to interfere, and we dismiss this appeal with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**