

Sheikh Karim Vs. Sobedar Sheikh

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Court : Kolkata

Decided On : Jul-19-1922

Reported in : AIR1924Cal531a,72Ind.Cas.47

Judge : Walmsley and ;B.B. Ghose, JJ.

Appellant : Sheikh Karim

Respondent : Sobedar Sheikh

Judgement :

Walmsley, J.

1. This appeal arises out of a suit for mesne profits. The story is rather a curious one. It appears from the Munsif s judgment that the defendant, who is now the appellant, brought a suit for partition of his land against the predecessor of the present plaintiff-respondent. He failed on the ground that the area in the occupation of the defendant was distinct and separate from the land claimed by the present plaintiff. Then there was a proceeding under Section 145, Civil Procedure Code, which ended in favour of the defendant. This was followed by a suit instituted by the plaintiff in which he asked for his title to be declared to a piece of land measuring one bigha ten cottas odd out of a larger plot measuring two bighas seven cottas odd. He gave the boundaries of the larger plot but did not give the boundaries of the smaller plot. He asked also for recovery of possession. He obtained a decree in both Courts, then proceeded to put his decree into execution.

On objection by the judgment-debtor, that is, the present defendant, the lower Appellate Court held that the decree was incapable of execution on the ground that it was so vague that it could not be determined what the land was, of which possession was to be given to the plaintiff. There was no appeal against that order of the lower Appellate Court with the result that the plaintiff has never been put in possession. Thereafter, the plaintiff instituted the suit from which this appeal arises asking for mesne profits for a period of some three years. The Courts below have given the plaintiff a decree for mesne profits amounting to Rs. 308 odd and, in the judgment of the Court of first instance, the details are given. The point which is pressed before us on behalf of the defendant is that the plaintiff was not entitled to a decree for mesne profits on the ground that he was not entitled to immediate possession of the land during the period for which mesne profits were claimed. The learned Pleader on behalf of the plaintiff-respondent has endeavoured to meet this argument by showing that the Courts below have been able to determine what particular trees were on the portion of the land claimed by the plaintiff. But to do this is to go behind the judgment of the Appellate Court in the execution proceedings. He has further tried to argue that, as the plaintiff's title has been declared, he is qualified to maintain a suit for mesne profits. The fallacy of this argument, I think, lies in this that the identity of the land is not established. The plaintiff must show that he is entitled to possession of the land which yielded the mesne profits that he claims and, in view of the decision of the Appellate Court in the execution proceedings, he is unable to do that. The result is that effect must be given to the argument advanced on behalf of the appellant and the appeal decreed and the plaintiff's suit dismissed but without costs in any Court in view of the peculiar circumstances of the case.

B.B. Ghose, J.

2. I agree.

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