

Nundo Coomar Roy Vs. Goluck Chunder Masanta and ors.

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Court : Kolkata

Decided On : Dec-02-1878

Reported in : (1879)ILR4Cal699

Judge : Richard Garth, C.J. and ;McDonell, J.

Appellant : Nundo Coomar Roy

Respondent : Goluck Chunder Masanta and ors.

Judgement :

Richard Garth, C.J.

1. Two points have been raised in this appeal:

2. First.--That, as the plaintiff claimed to set aside the order made under Section 530 of the Criminal Procedure Code in favour of the defendant, and to have possession of the property by virtue of an ancient debutter title, he was bound to prove, not only that he had been in possession for upwards of twelve years, but also to prove the debutter title which he set up.

3. Secondly.--That the learned Judge in this Court was wrong in supposing that there was some evidence of the debutter title upon which the Court below had acted.

4. In the view which we take of the first point it is not necessary to decide the second.
5. The first point we consider should be decided in accordance with the judgment of this Court in the case of *Gossain Dass Chunder v. Issur Chunder Nath* (I.L.R., 3 Cal., 223).
6. The plaintiff there claimed possession of certain land under a deed said to have been executed in the year 1857, and he also stated in his plaint that he had been in possession for upwards of twelve years under that deed. The plaintiff failed to prove the deed, but did prove that he had been in possession of the land for upwards of twelve years, and it was contended that the Courts below were wrong in finding in favour of the plaintiff upon the strength of the twelve years' possession only. It was said that, as he claimed under the deed, he was bound to prove that deed, otherwise his twelve years' possession would go for nothing.
7. But we held in that case, that the twelve years' adverse possession was sufficient to entitle the plaintiff to succeed, and we drew the distinction, which is equally applicable here, between cases where the plaintiff sues for a decree, declaring himself to be the owner of property on the strength of some particular title, and cases where he claims generally the possession of land under some alleged title, but coupled with a possession extending over twelve years or upwards.
8. In the first class of cases he is not entitled to a decree, declaring him to be the owner by virtue of the particular title, unless he proves that title. It is obviously impossible for the Court to give him a declaratory decree of that kind, unless he first establishes the title which he sets up.
9. But in the latter class of cases, whether he proves the origin of his title or no, if he can show a twelve years' continuous adverse possession as against the defendant, that is quite sufficient by the law of this country to give him a title of itself.

10. The present case appears to us to be clearly one of the latter character. Here the plaintiff claims by virtue of an ancient debutter title, but he says also, that he and his father have continued in possession for a much longer period than twelve years under that title. Assuming then that he had failed to prove the debutter title, the Court below has found that he and his father have been in possession for upwards of twelve years before proceedings were taken under Section 530.

11. The case of Gossain Dass Chunder v. Issur Chunder Nath (I.L.R., 3 Cal., 225) is, therefore, directly in point, and for the reasons given there, we consider that the plaintiff is entitled to recover in this suit.

12. The case of Ram Dhun Chuckerbutty v. S.M. Komul Tara (11 W.R., 301). which was decided by the late Mr. Justice Bayley and Sir Charles Hobhouse, certainly seems opposed to that view, but the distinction to which we have alluded does not appear to have occurred to the learned Judges in that case, and we believe that the rule upon which we are now acting is one which has been generally adopted by this Court of late years. There are certainly several recent authorities in favour of it, and it seems to us quite in accordance with good sense and justice.