

Khiroda Kanta Roy and ors. Vs. Krishna Das Laha and ors.

Khiroda Kanta Roy and ors. Vs. Krishna Das Laha and ors.

SooperKanoon Citation : sooperkanoon.com/885021

Court : Kolkata

Decided On : May-16-1910

Reported in : 6Ind.Cas.467

Judge : Mookerjee and ;Carnduff, JJ.

Appellant : Khiroda Kanta Roy and ors.

Respondent : Krishna Das Laha and ors.

Judgement :

1. The subject-matter of the litigation, which has given rise to this appeal, is an one-third share of a tract of land upon which is held a market, named by the plaintiffs-appellants, Kosbahat, and by the defendants-respondents, Babus Bazar. It is the common case of both parties that the land at one time formed part of the Estate of Raja Baroda Kanto Roy, and after his death passed by inheritance to his three sons, Raja Granada Kanta Kumar, Manada Kanta and Kumar Hemada Kanta. The share now in dispute admittedly was owned by Hemada Kanta. The plaintiffs found their title upon a sale in execution of a money-decree against Hemada Kanta, held on the 16th May 1893, and confirmed on the 30th September 1893. The sale certificate, in which the property was described as Kosbahat, was granted on the 8th January 1894, and symbolical possession was delivered to the purchasers by the Court two days later, on the 10th January 1894. The defendants-respondents found their title on a conveyance executed in their favour by Hemada Kanta on the 4th January, 1894 and registered on the same date. By

this conveyance, the defendants purchased the entire one-third share of Hemada Kanta in Purgunna Emadpur. The substantial question in controversy between the parties, therefore, was whether the disputed land was part of Kosbahat covered by the sale-certificate of the plaintiffs, or whether it was a separate property known as Babus Bazar, included in the estate purchased by the defendants. The Court of first instance decided this point against the plaintiffs and dismissed the suit. Upon appeal, the learned District Judge has reversed that finding, and upon the evidence on the record has come to the conclusion that the disputed land is part of the Kosbahat purchased by the plaintiffs, on the 16th May 1893. The Court of appeal below has, however, dismissed the suit on the ground that the plaintiffs are estopped from asserting their title against the defendants, inasmuch as from the 3rd May 1894, the disputed land has been allowed by the plaintiffs to be treated by the defendants as part of Babus Bazar which is admittedly the property of the latter. The plaintiffs have now appealed to this Court and on their behalf it has been contended that no question of estoppel arises, inasmuch as when a landowner in good faith points out to the owner of adjoining land an incorrect division line, he is not estopped subsequently to deny that such line is the correct boundary if both parties were ignorant at the time of the true line. In support of this proposition reliance has been placed upon a passage from Bigelow on Estoppel, 5th Edition, page 619, in which the learned author observes that there must have been, when incorrect line was acted upon, knowledge of the true boundary by the one party and ignorance of it by the other in order to estop the party from asserting it within the period of limitation, and this though it may have been intended that the incorrect line should be fixed upon as the true one and acted on accordingly. This position has been strenuously contested on behalf of the respondents and it has further been suggested that the learned District Judge has not based his decision on the ground of estoppel, but that he has merely used the evidence of subsequent conduct of the parties as an aid to the interpretation of the sale-certificate of the plaintiffs. In so far as the latter contention is concerned, there is, in our opinion, no substance in it. It is well-settled that a subsequent admission as to the true meaning of a document of title or the subsequent conduct of a party to, or of a person claiming under, the deed cannot be received in aid of its construction. This is well illustrated by the case of *Barton v. Dawes* (1850) 10 C.B.

201 : 84 R.R. 562 : 19 L.J.C.P. 302, where a question arose as to the extent of the land Conveyed by a deed, the land being described in a schedule and delineated in a plan drawn on the margin thereof. In an action brought to try the right to a slip of land not expressly mentioned in the schedule or the plan, evidence was offered to show that the locus-in-quo had always been treated as part of the property conveyed. It was ruled that, as the deed itself was unambiguous, the evidence was not admissible, and the deed must be treated as conclusive. To the same effect is the decision in *Boo v. Webster* (1840) 12 A. & E. 442 : 54 R.R. 597 : 4 P. & D. 270 : 9 L.J.Q.B. 373. The position might be different if a question arose as to the interpretation of an ancient document. The sale certificate in the case before us, however, cannot obviously be treated as an ancient document. See *North Eastern Railway Co. v. Hastings* (1900) A.C. 260 : 60 L.J. Ch. 516 : 82 L.T. 429, where Lord Davey declined to treat a lease of 1854 as an ancient deed). It is, therefore, impossible to accept as well-founded the contention of the respondents that the evidence of the conduct of the parties for about eleven years antecedent to the suit should be relied upon in aid of the true construction of the sale-certificate. Upon a close examination of the judgment of the District Judge, however, it is fairly clear that he has not treated the evidence of conduct subsequent from the point of view suggested, and there is no room for doubt that he has based his decision on the ground of estoppel. It is consequently necessary to examine whether his conclusion in this respect can be supported.

2. It may be conceded that the passage from Bigelow on Estoppel, upon which reliance is placed on behalf of the appellants, does, at first sight, appear to lend some support to their contention. The learned author refers to the cases of *Brewer v. Boston R.R. Co.* (1843) 5 Metcalfe 478 : 39 Am. Dec. 694, and *Liverpool Wharf v. Prescott* 7 Allen 494, in support of his view. In the first of these cases, it appears to have been ruled by Mr. Justice Wilde that where an admission of boundary has been made in good faith and by some mistake, such admission does not by law operate by way of an estoppel, because a party ought not to be estopped to prove a legal title to his estate by any misrepresentation of the locality made by mistake without fraud or intentional deception, although another party may be induced thereby to purchase an adjoining lot the title to which may prove defective, for the latter may require a warranty and it would be most unjust that a party should forfeit

his estate by a mere mistake. In the second case, a similar view was adopted on the ground that it was one of pure mistake without knowledge of the true boundary. Substantially the same view was taken in *Thayer v. Bacon* 3 Allen 163 : 80 Am. Dec. 59, and was affirmed by the unanimous judgment of the Supreme Court of the United States in *Schraeder Mining Company v. Packer* (1889) 129 U.S. 688. The rule thus stated, however, is subject to the qualification that the true owner cannot be permitted to assert his right, if his neighbour has been induced to part with something of a value upon the faith of his assertion; this principle was recognised in *Stuart v. Labelington* (1893) 1 Randolph 403 : 10 Am. Dec. 550. In other words, owners of adjoining tracts of land are not bound by consent to a boundary which has been defined under a mistaken apprehension that it is the true line, and neither party is precluded or estopped from claiming his own rights under the true line when discovered, provided that the position of his opponent has not been meanwhile altered on the faith, of his representation *Iverson v. Swam* (1897) 48 N.B. 282. That the rule thus qualified is supported by numerous cases in the American Courts is clear from the notes to *Evans v. Miller* (1880) 58 Mis. 120 : 38 Am. Rep. 313, where it is pointed out that some of the cases lay down the rule too broadly to the effect that the estoppel does not arise if the representation was made in ignorance under mistake. *Heivoz v. Cramer* (1892) 51 N.W. 173. This view is supported by leading text-writers [See, for instance, *Tiffany on Real Property*, M 261, and *Herman on Estoppel*, Volume 2 Chapter 18, Section 1137, where it is observed that although an admission by a party of a mistaken line for the true line has, by itself, no legal effect upon his title, an element of estoppel may arise, if during the acquiescence in the mistaken boundary, extensive improvements by the erection of buildings or otherwise have been made by the occupant of the premises in dispute.] This opinion is also in accord with the decision of the Judicial Committee in *Sarat Chundur Dey v. Gopal Chunder Laha* 20 C. 996 : 191 I.A. 203, where it is pointed out that the existence of an estoppel does not depend on the motive or on the knowledge of the matter on the part of the person making 'the representation. It is not essential that the, intention of the person whose declaration, act, or omission has induced another to act or to abstain from acting, should have been fraudulent, or that he should not have been under a mistake or misapprehension. The main question determining whether

estoppel has been occasioned, is, whether the representation has caused the person to whom it has been made to act on the faith of it. We are, therefore, unable to accept the broad contention of the appellants that merely because the boundary has been settled between the parties by a common mistake, there is no estoppel: nor are we prepared to adopt the view of the District Judge that because the line agreed upon has been accepted for several years as the true boundary, the plaintiffs are not 'entitled to assert their rights. The true test to be applied is whether the position of the defendants has been, in the interval, altered by the reliance they placed upon the representation of the plaintiffs. If their position has not been altered, the plaintiffs are entitled to prove the true division line and to recover possession of their property. If, on the other hand, the position of the defendants has been altered, the plaintiffs are clearly estopped. Now in the case before us there is no suggestion whatever that the position of the defendants has been in any way altered by the reliance they placed upon the representation or conduct' of the plaintiffs. There is no evidence to prove that they were induced, or encouraged by the settlement of the boundary to spend any sums on the improvement of the property. Their contention has merely been that, because the boundary line has been laid down by both the parties, the plaintiffs are not entitled to prove the true boundary, although what was done was due to ignorance founded upon an innocent mistake shared by both the parties. This position clearly cannot be maintained, because, as we have already explained, when adjoining owners lay down a line which they suppose to be the true boundary, and both are clearly chargeable with notice of the true line, they are not estopped from claiming the true line when they ascertain it, if meanwhile the position of the parties has not been altered; in other words, mere acquiescence in the boundary erroneously laid down does not, by itself, constitute an estoppel. We may further observe that in the written statement of the defendants it was asserted that a partition had been effected between the parties on the basis of the boundary line as settled. No evidence was, however, adduced upon this point to show how far the conduct of the parties, has been, if at all, affected by the settlement of the boundary line, and in the Court of the first instance, the defendants did not press their objection on this ground. It is needless, therefore, to consider what the position of the parties might have been if the boundary line had been fixed in settlement of an existing

dispute. The view may well be maintained that, if the boundary line between the lands of two adjacent owners has led to any dispute, and if in settlement of such dispute the parties have adopted a certain boundary as the true line of division between their properties, neither can be permitted to resile from the settlement. The distinction between this class of cases and the case now before us, is that in the former the parties settled their dispute by ascertainment of a boundary which had never been determined, in the latter, by a mistake, they agreed upon a line where their mistake can be corrected and the true line ascertained. In the case before us, there is no suggestion that the boundary line was in settlement of dispute, nor, as we have observed, is there any proof that the defendants have in any way altered their position on the faith of the boundary line laid down. The rule, therefore, is applicable that the boundary line agreed on by mistake is not binding upon the parties. If the defendants could prove that their position had been materially altered or that there was a settlement of doubtful, conflicting or disputed boundaries, the Court would have refused to allow the plaintiffs to establish their claim after long acquiescence in the boundary upon which they have agreed. The result, therefore, is that the ground upon which the District Judge has dismissed the suit cannot be supported.

3. The only point which remains for consideration is, whether the claim of the plaintiffs is barred by limitation; this question has not been determined by either of the Courts below, and consequently under Section 103 of the Civil Procedure Code of 1908, it is competent to this Court to determine the point upon the evidence on the record. Now, as already stated, the plaintiffs purchased the property on the 16th May 1893. The sale was confirmed on the 30th September 1893. The present action was commenced on the 22nd December 1905. It is not disputed that the judgment-debtor, Hemada Kanta, was in possession at the date of the execution-sale. Upon these facts, it has been argued on behalf of the respondents that Article 138 of the Limitation Act is applicable to the case. That article provides that a suit, by a purchaser at a sale in execution of a decree for possession of immovable property sold, when the judgment-debtor was in possession at the date of the sale, must be commenced within 12 years from the date of the sale. This obviously applies to suits brought against the judgment-debtor or persons who have derived title from him see *Raghu Nath v. Bhagat Syed*

Samad Shah 7 C.L.J. 560 : 12 C.W.N. 617. The article cannot be applied to a suit brought against a defendant who has not acquired a title from the judgment-debtor [see the observations on the scope of Articles 136, 137 and 138 in. Lakshman Venayak Kulkarni v. Bisan Singh 15 B. 261, Lakshman v. Moru 16 B. 722, Namdev v. Ram Chundra Gomaji Marwadi 18 B. 37, Gopal v. Krishna Rao 25 B. 275. We must; consequently hold that Article 136 does not apply to the present suit, because it has been found that the judgment-debtor did not and could not transfer the disputed property to the defendants. The question next arises whether Article 142 is applicable. That article applies only to suits for possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued possession. It is not suggested here that the present plaintiffs had at any time actual possession of the disputed property. The symbolical possessions which they obtained through Court on the 10th January 1894, however operative it might be as against the judgment-debtor, cannot be of any avail as against the defendants, who, as is clear from the evidence, took possession on the 5th January 1894, that is, on the day following the registration of the conveyance in their favour; Juggabundhu Mukerjee v. Ram Chunder Bysack 5 C. 584 : 5 C.L.R. 548 and Jaggobundhu Mitter v. Purnanund Gossami 16 C. 530. It is clear, therefore, that Article 142 has no application. The only article, therefore, which can apply is Article 144, which provides that a suit for possession of immovable property, not otherwise specially provided for in the Limitation Act, must be commenced within 12 years from the date when the possession of the defendant becomes adverse to the plaintiff. Now the expression 'defendant' as defined in Section 3 of the Act includes a person from or through whom a defendant derives his liability to be sued. In the case before us, it cannot be reasonably contended that the defendants derived their liability to be sued from Hemada Kanta. As already explained, Hemada Kanta did not and could not transfer the disputed property to the defendants, who, under colour of their conveyance from him, took possession of the property on the 5th January 1894. Their possession, therefore, became adverse to the plaintiffs from that date, and as the suit was commenced on the 22nd December 1905, it is manifest that it is riot barred under Article 144 of the Limitation Act. We must accordingly hold that the plaintiffs have established their title to the disputed property, that no rule of

estoppel stands in the way of successful assertion of such title against the defendants and that the present action commenced for that purpose is not barred by limitation.

4. The result, therefore, is that this appeal must be allowed, and the decree of dismissal made by the District Judge in affirmance of the decision of the original Court discharged. The suit will be decreed and the plaintiffs will be entitled in execution to recover possession of the disputed one-third share of the property. Under the circumstances of the case, we are of opinion, however, that there ought not to be any decree for mesne profits and the parties should bear their own costs throughout the litigation.

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