

Before Mr. Justice Loch and Mr. Justice Mitford.

1868  
June 7.

BHOLAI MANDAL (ONE OF THE DEFENDANTS) v. JARIF GAZI AND  
ANOTHER (PLAINTIFFS).\*

*Title—Possession.*

Where a plaintiff sued to recover possession of certain lands under a mowrasi patta which had been lost, and proved ten years' possession, held, that such possession alone would not entitle him to recover possession of the land, but that he must prove the specific title set up by him.

THE plaintiffs sued to recover possession of three bigas of land, alleging that they held under a mowrasi patta granted to them in 1257 (1850) by the defendants Bholai Mandal, Karim Mandal, and Hanip Mandal gantidars, and that they were in possession under that patta till the 2nd Falgoun 1274 (1867) when they were dispossessed by the fourth defendant Nabin Gazi.

The plaintiffs were unable to produce the mowrasi patta under which they claimed, and stated that it had been destroyed in the cyclone of 1271 (1864) together with the dakhilas up to that date: but they produced dakhilas subsequent to that period. The gantidar defendants denied that the plaintiffs had possession of the land before 1271, and that the plaintiffs held a mowrasi lease at all; but they said that the plaintiffs were in possession from 1271 (1864) to 1274 (1867) under a lease for a fixed period of three years, and they produced a kabuliat which they stated was given to them by the plaintiffs; and that in 1274 (1867) on the expiry of the said lease they relet the land to Nabin Gazi.

The Moonsiff dismissed the plaintiffs' suit on the ground that they had not proved the title set up by them; and that no possession by them for more than three years had been proved. The Judge on appeal reversed this decision. He placed no reliance on the genuineness of the kabuliat filed by the defendants; considered the plaintiffs to have proved possession for not less than ten years, and gave them a decree for possession of the lands. The defendant Bholai Mandai appealed to the High Court.

Baboo Anand Gopal Palit for appellant.

Baboo Amar Nath Bose for respondent.

The judgment of the Court was delivered by

LOCH, J.—In this case the plaintiffs sued to recover possession on the ground of holding under a mowrasi patta, and made the gantidars from whom they held the lease and also Nabin Gazi by whom they say they have been dispossessed, defendants in the case.

\*Special Appeal, No. 3263 of 1868, from a decree of the Judge of 24-Per-gunas, dated the 6th November 1868, reversing a decree of the Moonsiff of that district, dated the 7th May 1868.

1869  
 BHOLAI  
 MANDAL  
 v.  
 JARIF GAZI.

The Judge in appeal has found that the plaintiffs held possession for not less than 10 years, and the Judge says that "as the defendants have failed to justify the dispossession of the plaintiffs of their own authority, and as they did not obtain the eviction of plaintiffs by process of law, the plaintiffs are entitled to be replaced in possession"

The Judge goes on to say "it does not lie with the Court to determine in this suit the terms on which the plaintiffs are entitled to hold the lands or whether they are entitled to hold the lands for a further period; and he gave the plaintiffs a decree for possession."

In special appeal it is urged that the plaintiffs coming in upon a specific title, that is holding from the defendants under a mowrasi patta, were bound to prove their title; and we think that this contention is correct. The plaintiffs made the landlords parties to this suit, and we think that they cannot recover unless they prove the existence of their lease, and it is not sufficient for them merely to prove occupation for 10 years, the Judge not having found more than that period in their favor; and there is no proof of mowrasi tenure.

It would be useless to remand the case, we therefore reverse the decree of the lower Appellate Court, and affirm the decree of the Court of first instance, and the appellant will get his costs of all the Courts.

1869  
 June 8.

*Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

NILAMBAR SEN (JUDGMENT-DEBTOR) v KALI KISHOR SEN (DECREE HOLDER)\*

*Improvement of Joint Property—Contribution—Revival of Decree—Jurisdiction.*

In a suit for recovery of a sum of money expended towards improvement of a joint property, the Court passed a decree that if the defendant would contribute toward payment of the expenses for the improvement, he would be entitled to a proportionate share of the profits. No steps were taken by the plaintiff from 1863 to revive the decree, but on the application of the defendant tendering the amount due from him, and praying to be put in possession, the lower Court restored the decree and passed an order in his favor.

*Held*, that the lower Courts had no jurisdiction to revive a decree at the instance of the judgment debtor.

Baboo Nilmadhab Bose for appellant.

Baboo Hem Chandra Banerjee for respondent.

THE judgment was delivered by

BAYLEY, J.—In this case it appears that the appellant, Nilambar Sen, was co-sharer of certain property with his brother Pitambar Sen, and was sued by him (Pitambar) for certain money expended in the improvement of that property. The Court in that case passed a decree in favor of Pitambar, or

\*Miscellaneous Special Appeal, No 157 of 1869, from a decree of the Officiating Judge of Dacca, dated the 22nd January 1869, affirming a decree of the Moorsiff of that district, dated the 23th July 1868.