

CASES

DETERMINED BY

THE HIGH COURT OF JUDICATURE

AT FORT WILLIAM IN BENGAL,

IN ITS

ORIGINAL JURISDICTION.

CIVIL.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Macpherson.

RADHAKRISHNA SETT AND OTHERS, APPELLANTS, v. HARA-
KRISHNA DOSS, RESPONDENT.

1867
Sept. 11.

Suit for Possession—Decree.

In a suit for recovery of possession of land, it was declared that the plaintiff was entitled to possession as owner, and ordered that the defendants should deliver to him possession as such. *Held*, on appeal, that the decree should have simply declared that the plaintiff was entitled to possession, without any declaration of right as owner.

THIS was a suit to recover possession of a piece of land, which the plaintiff (respondent) alleged had been wrongfully taken by the defendants (appellants), and to recover Rs. 1,000 as damages for the dispossession.

The land in question was contiguous to some property belonging to the plaintiff, and also adjoined property of the defendants. From the evidence it appeared that the plaintiff had been in possession, though not in actual occupation of the land, for some time before forcible possession was taken by the defendants. The evidence on the part of the defendants was insufficient to show that they had possession, or that there were any acts of ownership on their part, prior to the possession of the plaintiff.

At the original hearing, the following decree was made by Markby, J.:—

It is declared that the plaintiff is entitled to the possession as owner of the piece of land; and it is ordered and decreed

1867
 RADHAKRISH-
 NA SETT.
 v.
 HARAKRISH-
 NA DOSS.

that the defendants do deliver up to the plaintiff quiet possession of the said piece of land to which he is entitled as aforesaid ; and it is ordered and decreed that the defendants do pay to the plaintiff his costs of this suit (to be taxed by the taxing officer, under the heading, class 2, Ordinary Causes) with interest thereon, at the rate of 6 per cent. per annum, from the date of taxation to the date of realization.

From this decree the defendants appealed.

Mr. *Woodroffe* and Mr. *Marindin* for appellants.

The *Advocate-General* and Mr. *Lowe* for respondent.

The judgment of the Court was delivered by

PEACOCK, C. J.—It appears to me that there was sufficient evidence in this case to prove that the plaintiff is entitled to recover possession of the land from the defendants. I think the evidence adduced proved that the plaintiff had a possession previous to the time at which the defendants took possession, and that the plaintiff had not abandoned that possession, though he was not actually on the premises, but the plaintiff has asked for a declaration that he has got a title to the premises, which, if it stands, would prevent the defendant from ever shewing that he had better title than the plaintiff. We think that the decree ought to be amended, by simply declaring that the plaintiff do recover possession of the premises without making any declaration of his right as owner. The defendants appealed in this case on the ground (amongst others) stated in the fourth item of the appeal, that the plaintiff did not produce any evidence of title to the said land, or a possession thereof by the plaintiff twelve years previous to the institution of this suit ; and therefore made no case entitling him to a decree for possession of the land. He has failed in making out this ground of appeal, and, therefore, the plaintiff is entitled to the costs of this appeal according to scale 2.

Attorney for appellants : *Mr. Hatch.*

Attorneys for respondent : *Messrs. Barrow & Co.*