

1869

MOONSHI
DWHER ALI
v.
RAMCHAND.

We are, however, of opinion that the imaginary possession upon which the Judge relies is, in fact, no possession at all, and that, consequently, the plaintiffs' case entirely fails. There is, in truth, no finding of the Court that possession either by the plaintiffs or by those whose rights they purchased, was ever held within 12 years of the date of suit: and seeing that the plaintiffs were declared purchasers in 1857, it is an absurdity to say that a proclamation of sale made in October 1857, and never acted upon in any way, can be considered such a possession as will prevent the operation of the law of limitation. The decree of the Judge is reversed, and the plaintiffs' suit is dismissed with all costs.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

JAGABANDHU DAS DAS GAJENDRA MAHAPATRA (DEFENDANT) v.
DINABANDHU DAS GAJENDRA MAHAPATRA (PLAINTIFF)*

1868
Dec. 19.

Evidence—Possession—Ownership.

In special appeal, the High Court held that evidence which did not allude to any specific acts of ownership, was not sufficient evidence to prove possession.

The finding of the fact of possession by the lower Appellate Court upon such evidence reversed in special appeal.

Baboo *Anukul Chandra Mookerjee*, *Hem Chandra Banerjee*, and *Bama Charan Banerjee* for appellant.

Baboo *Ashutosh Dhur* for respondent.

The judgment of the Court was delivered by

JACKSON, J.—We think that the plaintiff in this case has not proved that possession which it was necessary for him to prove, in order to save his suit from the plea of limitation which was urged in bar. The plaintiff admitted that he and the defendants had been formerly joint, but that a separation took place so far back as 11 years, 11 months and 22 days, and that this property, in the course of that separation, had been taken possession of by the defendant, and the plaintiff from that date to this had never had any possession of it.

The plaintiff gives no explanation as to the cause of this extraordinary circumstance, but alleges that this property was a portion of the ancestral property, and that he is entitled to his share of it. The case was remanded to the Judge, in order that he should inquire very carefully into the question of this possession, but the Judge was of opinion that slight evidence, if credible, was sufficient, considering the difficulties under which the plaintiff

* Special Appeal, No. 1531 of 1868, from a decree of the Officiating Judge of Midnapore, dated the 27th March 1868, affirming a decree of the Principal Sudder Ameen of that district, the 28th May 1866.

must, under the circumstances, be in proving his case. Whatever may be these difficulties, it is evidently the plaintiff himself who has by long delay and sleeping over his case, allowed such difficulties to intervene in the proof of his suit.

On special appeal it is urged before us, that the evidence upon which the Judge has decided that the plaintiff has proved his possession, is only general evidence to the fact that before the separation in 1261 (1854) the brothers were in joint possession. It is not specific evidence; it does not allude to any specific acts of ownership; in fact, it in no way really proves that within 12 years of the date of suit the plaintiff had any possession in this particular property.

After hearing the pleaders for both sides, we are of opinion that this contention is good, and that the evidence is altogether insufficient. It may be that it is almost impossible to produce evidence on that point now, but for this the plaintiff has only himself to blame; he certainly has not produced sufficient evidence, and his case must be dismissed on the point of limitation. We, therefore, reverse the decision of the Judge, and decree this appeal with costs.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

SONATAN ROY AND ANOTHER (PLAINTIFFS) v ANANDA KUMAR
MOOKERJEE AND OTHERS (DEFENDANTS).*

Jurisdiction—Kabuliat—Act X of 1859, s. 23, cl. 1.

A suit to set aside a decree passed by a Deputy Collector, for executing a kabuliat in favor of the defendant, and for a declaration that the land in suit pertains to the talook of a third party, is not cognizable by the Civil Court.

By clause 1, section 23, Act X. of 1859, the exclusive cognizance of suits by a zemindar against his ryot to obtain a kabuliat, is reserved to the Court of the Collector.

This was a suit for the reversal of a judgment of the Deputy Collector, ordering the plaintiff to execute a kabuliat in favor of the defendant, and also for a declaration that the jummal land, the subject-matter of the present suit, appertains to Balia Kistobati, and not to Banchunleapur, the estate of the defendants.

The defendants set up, in their written statement, that the suit was not cognizable by the Civil Court.

The Moonsiff held, that as the suit was not for rent, but for declaration of title to land, it was cognizable by the Civil Court, and throwing the onus of proof upon the defendants, passed a decree in favor of the plaintiff.

* Special Appeal, No. 1702 of 1863, from a decree of the Judge of West Burdwan, dated the 27th of March 1863, reversing a decree of the Moonsiff of that district, dated the 15th of January 1863.

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JAGABANDHU
DAS GAJEN
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v.

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Feb'y. 6.See also
15 B. L. J
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