

The judgment of the High Court was delivered by—

1868

THE QUEEN
v.
CHOWDERY.

NORMAN, J.—We see no reason for interference, though no summons was served. An order was passed by the Joint-Magistrate in open Court, in the presence of the parties, that they should appear on a certain day and show cause why they should not give security to the amount of Rs. 2,000. In pursuance of that order, the parties did appear and shewed cause. They were fully informed of the grounds of the order by the proceedings which had previously taken place.

Before Mr Justice B Jackson and Mr Justice Macpherson.

MOONSHI JOWHER ALI (DEPONDANT) v. RAMCHAND AND OTHERS
(PLINTIFFS)

1869
Feb'y. 25

Possession—Limitation.

In a suit for possession of certain lands purchased by plaintiff at a sale, in execution of a decree of the Sudder Ameen's Court, the lower Court held that 'possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court,' and that the suit, being brought within 12 years of that proclamation, was in time. Held on appeal, that such imaginary possession was no possession at all, and that the suit was barred by limitation.

Mr. C Gregory for appellat

Baboo Hem Chandra Benerjee for respondent.

The judgment of the High Court was delivered by

MACPHERSON, J.—The question on this case is, whether there is any evidence given by the plaintiffs of their possession within 12 years prior to the institution of the suit. The plaintiffs claim as purchasers at a sale in execution of a decree of a Sudder Ameen's Court, and their sale certificate bears date the 12th of August 1857. The plaintiffs are found by the lower Court to have obtained possession "by proclamation of sale, through the Sudder Ameen's Court," on the 25th of October 1857, but the Court also finds that they did not, in fact, get possession. The Court considering possession "by proclamation of sale, through the Sudder Ameen's Courts to be possession in a manner through the Court," held that the plaintiff's suit was not barred.

* Special Appeal, No. 2007 of 1863, from a decree of the Judge of Purneah, dated the 24th of March 1863, affirming a decree of the Sudder Ameen of that district, dated the 27th of July 1867.

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 *Bansa Charan Banerjee* for appellants.

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.