1868
Dec. 18.

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

SHIU DAYAL PURI AND ANOTHER (DEFENDANTS) *v.* THAKUR MAHABIR PRASAD (PLAINTIFF.)*

Evidence of Mokurruri Title.

Mere proof of possession for more than 12 years does not amount to proof of a mokurruri title.

Baboos *Chandra Madhab Ghose* and *Ramesh Chandra Mitter* for appellants.

Baboos *Annada Prasad Banerjee*, *Mahesh Chandra Choudhry*, *Purna Chandra Shome*, and *Mohini Mohan Roy* for respondents.

L. S. JACKSON, J.—The plaintiff in this case alleged that he held a mokurruri tenure of the lands in dispute under the party from whom the defendant, Shiu Charan, had purchased, and under the defendant, Shiu Dayal; and that having brought a suit in the Revenue Court against the defendants for damages on account of an alleged injury to his crops committed by them, he had been found by the Revenue Court not to be in possession; and that, consequently, by reason of that decision, and on the date of the decision, he had been dispossessed; he, therefore, asked the Court to adjudicate upon his mokururee title, and replace him in possession.

The lower Appellate Court seems to me to have distinctly found that the alleged mokururee title of the plaintiff was not proved, but having allowed the plaintiff an opportunity of adducing further evidence on the question of possession, and the plaintiff having given such evidence, the Judge considered that possession for more than 12 years had been made out on the plaintiff's part; and, therefore, on the ground simply of his possession, affirmed the decree which the plaintiff had obtained. The contention before us in special appeal is that, under the circumstances of this case, mere proof of possession is not sufficient to entitle the plaintiff to a verdict.

For the respondent it is urged that, in the first place, there was evidence and conclusive evidence in favor of the plaintiff as to his mokururee right, and that no objection to the finding of the Court below on that point has been tendered; but also it is urged that proof of possession was sufficient.

As to the so-called conclusive evidence regarding the plaintiff's mokurrurt appears to me that it was not such evidence. (His Lordship here commented upon the evidence in detail).

The question remains whether the Judge was right in holding that the plaintiff was entitled to a judgment on merely proving his possession. The respondent's pleader cites a decision of this Bench in the case of *Biswanath v. Brajamohan Chuckerbutty* (1).

* Special Appeal, No. 1808 of 1868, from a decree of the Judge of Shahabad, affirming a decree of the Sudder Ameen of that district.

(1) 1 B. L. R. (Short Notes), 1.

1869

SHIU DAYAL PURI. v. THAKUR MAHABIR PRASAD.

That case appears to me clearly distinguishable from the present. In that case, the plaintiff held the lands in dispute as lakherajdar, and his possession was, consequently, adverse to that of the defendant, who was the zemindar; and in that case, Mr. Justice Mitter and myself, properly, as I think, applied the ruling of the Judicial Committee of the Privy Council, which is cited in our judgment. In the present case, the plaintiff was by his own admission the tenant of the defendant, and he states that he paid them rent; his possession, therefore, does not in itself lead to any inference as to the character of the tenure. The fact of his having occupied the land and paid rent for twelve years, or even twenty years, is equally consistent with his being a tenant-at-will, a farmer, or a mokururedar. I think, therefore, that the Judge was wrong in holding that on proof of possession, the plaintiff was entitled to a decree. Moreover, he did not merely ask for possession, but he asked the Court to adjudicate upon his alleged mokururee title, and to restore him to possession as mokururedar. I think the decision of the lower Appellate Court must be reversed with costs.

E. JACKSON, J.—I am wholly of the same opinion.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869
January 25.

THE QUEEN *v.* RASSUL NUSHY AND OTHERS.*

Obstructing a Road—Act XXV. of 1861, *s.* 320.

Where A complained merely to the Magistrate that "a certain road had been obstructed by Band others," *held*, that the Magistrate was not bound to enquire into the matter under section 320 of Act XXV of 1861.

Durga Prasad Das complained to the Magistrate of Rungpore that "a certain road had been obstructed by Rassul Nushy and others." The Magistrate merely passed the order "let it be filed in the office." The Judge held, that the Magistrate was wrong: (1) in not enquiring if the road was public or private; (2) in not recording his opinion in English; (3) in not proceeding under sections 308 or 320 of the Criminal Procedure Code according as the road was public or private. The Magistrate considered that it was for the person aggrieved to make out his right to the road in the Civil Court. The Judge held, that the *onus* lay on the other side to show that they had a right to close the road. It did not appear that there was any fear of a breach of the peace.

JACKSON, J.—It is clear that the interference of the Magistrate in this case was not asked on the ground that the road was a public road. The application made by the petitioner consists of a hurriedly and carelessly written petition of four lines. It does not state when the pathway was dug up by the defend-

* Reference under section 434 of the Code of Criminal Procedure.