

The 24th November 1875.

*Present :*

The Hon'ble F. B. Kemp and C. Pontifex,  
*Judges.*

Confirmation of Possession—Onus Probandi.

Case No. 1041 of 1874.

*Special Appeal from a decision passed by the Subordinate Judge of Sarun, dated the 12th February 1874, reversing a decision of the Sudder Moonsiff of that District, dated the 10th July 1872.*

Sansar Roy (Plaintiff), *Appellant,*

*versus*

Indrasun Roy and others (Defendants),  
*Respondents.*

*Moonshee Mahomed Yusuf* for Appellant.

*Baboos Chunder Madhub Ghose and Huree Hur Nath* for Respondent.

A plaintiff who comes into Court alleging possession, and that that possession has been threatened by the acts of the defendant, and asking for confirmation of that possession, is bound to prove that he is in possession.

*Kemp, J.*—WE do not consider it necessary to hear the respondents' pleader in this case. The plaintiff's suit, as he chose to frame it, was that he was in possession of 20 beeghas of land; and that the defendants had in a criminal suit asserted that they had the kashtkaree rights in those lands; that the criminal suit was disposed of without any adjudication of the right of either party; that guards were appointed to look after and protect the crops of the disputed lands, but that the defendants, without any right to the crops, forcibly carried them away; that, by this conduct on their part, the plaintiff's possession has been interrupted, and injury accrued to him. He therefore brings this suit, and prays that his possession of the land in suit may be confirmed. The written statements of the defendants are to the effect that they are in possession of the lands in dispute, and that the plaintiff is not in possession; and that this is an attempt, on the part of the plaintiff, to recover possession of land to

which his claim of right has already been dismissed in a former suit. The first Court gave the plaintiff a decree; the second Court reversed that decision. The Subordinate Judge says that he has carefully gone through the evidence; that he has inspected the land and examined independent witnesses on the spot; that amongst the witnesses examined was the patwaree of the village; and that he has come to the conclusion that the plaintiff is not in possession. It is true that he goes on to say that this is an endeavour, on the part of the plaintiff, to obtain possession of 901 beeghas of land called *cheragah*, respecting which his former suit had been dismissed; but the Subordinate Judge also says that the plaintiff's possession of the 20 beeghas has not been proved, and he gives his reasons for this finding, namely, that the plaintiff has not filed the jumma-bundee papers of these lands, and that the patwaree and the other witnesses examined on the spot established the defendants' possession over these 20 beeghas. Again, in the latter portion of his decision, he says that "in the face of the positive evidence of the patwaree and the neighbouring ryots who have sworn to the ingenuity of the plaintiff having sued for the same land in part, for the integral of which his former suit failed," and of the fact that he distrusted the evidence of the plaintiff's witnesses, alleging the plaintiff's possession, and alleging opposition offered to him; and, further, of the fact that he found no guards on the spot when he visited the disputed land, he came to the conclusion that the defendants are in possession of the 20 beeghas, the subject of suit; that the plaintiff had not made out that the defendants threatened to disturb his possession, which is the ground on which he prayed for a declaration of title, and therefore that no adjudication of title was necessary; that the plaintiff's course is to sue for possession by investigation of title, if he has any.

We think there has been a clear finding in this case. The plaintiff who came into Court, alleging that he was in possession, and that that possession had been threatened by the acts of the defendants, and asking for confirmation of that possession, was bound to prove that he was in possession. The Court below has found on a question of fact on the evidence that the defendants are in possession of the disputed lands, and not the plaintiff, and has, therefore, refused to confirm the alleged title of the plaintiff, leaving him to sue in an ejectment-suit to establish his title.

We dismiss the special appeal with costs.