

APPELLATE JURISDICTION (a)

Special Appeal No. 419 of 1862.

MUHAMMAD ALI BĀVĀ LABBI, and another... *Appellants.*

MOHIĀDIN NAINĀR and others..... *Respondents.*

The mere possession by one person of another's land does not render the former liable to account for the profits. For these he is liable only where he has held tortiously, or under an agreement, express or implied; to make them good.

THIS was a special appeal from the decree of R. R. Cotton the Civil Judge of Madura, in Cross-Appeal-Suits Nos. 32 and 33 of 1862, and from the decree of Maulavi Sayyid Muhammad Mustafā Sāhib, the Mufti Sadr Amin of Madura, in Original Suit No. 315 of 1860. In this suit the plaintiffs prayed for a decree prohibiting the defendant's interference with their enjoyment of eight kalams, three markāls, and three padis of nanjey land (yielding an annual produce of rupees 222-12-0, paying a kist of rupees 5-14-3 and situate in the village of Rannattan), and adjudging the defendants to pay to the plaintiffs, rupees 1,745-2-6 the loss of produce and interest thereon, and also to hand over to the plaintiff certain jewels or the value thereof.

1862.
December 11.
S. A. No. 157
of 1862.

Sadagopāchārlu for the appellants, the defendants.

Tirumalachariuar for two of the respondents the first and third plaintiffs.

The Court delivered the following

JUDGMENT :—The plaintiffs represent, that they left their country in the year 1846, and that in 1852, during their continued absence, the first defendant received charge of their property, consisting of land and moveables, from their mother. They also state that part of the property has been returned to them, and they sue for the residue, together with produce realized from the land in the meantime.

(a) Present Strange and Frere, J J.

1862.
 December 11.
 S. A. No. 127
 of 1862.

The Mufti Sadr Amin has awarded the land sued for, but has disallowed the other items.

From this decree both parties appealed, on which the Civil Judge altered the Sadr Amin's decree by awarding also the produce demanded.

The mere possession of the land by the defendants does not render them liable to refund the profits thereof. They held the land by consent, and under no condition to make good these profits. The plaintiffs, consequently, are without power to compel them to account for these profits, for which they could only be liable had they held possession under an express or implied agreement to make them good, or as wrong-doers.

We therefore disallow the produce. We further require the plaintiffs to pay the costs of the appeal which they instituted, as also those of this special appeal.

Appeal allowed.

NOTE.—Where there is a mere *bona fide* adverse possession English courts of equity do not carry back the account beyond the filing of the bill (*Pulteney v. Warren*, 6 Ves. 93 : *Hicks v. Sullitt*, 3 De G. M. & G. 813), unless there has been a demand of possession by the plaintiff before bill filed, or acts equivalent thereto (*Penny v. Allen*, 7. De G. M. & G. 409, 428). But where the equitable owner is guilty of laches, the account will be carried back only to the filing of the bill (*Schroder v. Schroder*, Kay 591); and in one case, where the laches was great, an account was not directed beyond the date of the decree (*Acherely v. Roe*, 6 Ves. 565, 573 per Lord Loughborough). See *Lewin's Law of Trusts and Trustees*, 4th ed. 579.
