

Privy Council Appeal No. 89 of 1923.

Bengal Appeal No. 1 of 1922.

Raja Sasi Sekhaheswar Roy Bahadur - - - - *Appellant*

v.

Lalit Mohan Maitra, since deceased - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 31ST OCTOBER, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD ATKINSON.

MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

In this case a question has arisen between two Zemindars. They were in possession of certain properties in what may be called a very uncomfortable manner, that is to say, they possessed certain lands in common, and the way of possession was a very uncomfortable way. One got the rents of certain tenants, and the other got the rents of others, and sometimes they both went to the same tenant and each realised a portion of his rent. In order to get rid of this inconvenient situation, they agreed to arbitration ; an arbitration was accordingly held, and the arbitrator allotted certain villages to one, and certain villages to the other. Thereupon possession to a certain extent was taken in accordance with the award. The present suit was raised by the plaintiff, and the object of the suit was to get possession of certain lands which he said were his under the award, and of which the defendant was in improper possession. He makes a plain averment in the plaint.

He says, after setting out the fact of the award and the finding, "But in spite of his"—that is the defendant—"being bound in accordance with the provisions of the said award and the decree passed upon it to give up to the possession of the plaintiff" certain lands, "the defendant has not done so. The defendant is not entitled and has no right to enjoy and possess the lands mentioned" in the three schedules annexed. For relief he asks "That on declaration that the lands mentioned in the three schedules are lands depicted in the Revenues Survey maps of mouzahs Lakshmipur, Bilborendra and Begpur respectively, and (on declaration) of the plaintiff's right on the basis of the aforesaid award and the decree passed upon it to get possession of the same, the plaintiff may get decree for khas possession of the same on eviction of the defendant from all these lands." The answer that is made by the defendant, and which has been given effect to by the court below is that if what the plaintiff says is true, the defendant ought to have executed the decree which he got and not have allowed that decree to become null by reason of limitation. The question, therefore, resolves itself into this : Could he on the statement of the facts now made have at the time got execution upon the decree ? The decree was filed in court, and the order of the court is this : "It is ordered that this suit be decreed in the terms of the award annexed herewith." The effect of that is not doubtful. It is a decree which so to speak sets out again the words of the award. The words of the award, after going into the matter of the boundaries of the land and describing them, are these : "I further decide that the parties will collect rents and other profits" from a certain date "and that each of the two parties above named will deliver respectively to each other all the Zemindari papers which they may have in their possession." If it is the fact, as the plaintiff says in his plaint, that the defendant did not give up possession, the way in which the plaintiff was kept out of the lands which he ought to have had can only have been one of two ways : Either it was that a cultivating tenant was on these lands and paid rent to the defendant instead of to the plaintiff as he ought to have done, or else, if there was no tenant then it must have been that the plaintiff was kept out of the lands in a physical sense, that is to say, he was not allowed to go on to them. It seems to their Lordships to be plain that in either of those cases an appropriate warrant could have been got from the Court upon a decree framed in the terms mentioned. That seems to end the case. It does not end perhaps all that might have been made of the case, because one can see that there might have been a case of this sort, and for aught their Lordships know this may really be the case : Some of these lands, how much exactly they do not know, but certainly a good proportion, were jungle lands, or lands under water, at any rate lands not in a fit state for cultivation. If after the award the parties went down to the ground and said : "Here are the boundaries that have been settled by the

arbitrator; this is my land, and that is yours," and then went away and nothing happened as regards this waste or watery land, and neither party went on to it and possessed it, and then, after the expiry of the limitation years upon the judgment on the award, the defendant by means of a tenant went in upon those lands and began to cultivate them, and took the rent from the tenant, who was so put in, it is quite clear that the plaintiff could then have come and asked the assistance of the court. He would have founded upon the award itself and not upon the decree following upon it, and to that there would have been no answer. But unfortunately, although there is, one may almost say more than a hint that that is the true state of the case, that is not the case that was made, and it is a case obviously that would not only have had to be averred but proved, and there might and probably would have been a great deal of evidence on one side and on the other. It is too late now for their Lordships to take up that case. They will therefore humbly advise His Majesty that the appeal must be dismissed with costs.

In the Privy Council.

RAJA SASI SEKHARESWAR ROY BAHADUR

v.

LALIT MOHAN MAITRA, SINCE DECEASED.

DELIVERED BY LORD DUNEDIN.

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