

Abdul Rahim Kazi and anr. Vs. Jonabali Sardar and ors.

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Court : Kolkata

Decided On : Feb-16-1922

Reported in : 68Ind.Cas.329

Judge : Newbould, J.

Appellant : Abdul Rahim Kazi and anr.

Respondent : Jonabali Sardar and ors.

Judgement :

Newbould, J.

1. The plaintiffs respondents brought the suit out of which this appeal arises for recovery of possession of three plats of land on declaration of their title thereto. As regards two of the plot Nos. 1115 and 211, both Courts have held that the plaintiffs' case failed, and the ugh a cross-objection in respect of this finding was taken on behalf of the respondents it has not been pressed at the hearing of this appeal.

2. We are now only concerned with plot No. 1116 in respect of which the Munsif dismissed the plaintiffs' suit but the lower Appellate Court gave the plaintiffs a decree for a 14-annas share. As regards this plot the only question that really arises in this appeal is as to the admissibility of certain documents on which the lower Appellate Court has based this finding in favour of the plaintiffs. In proving their title to this plot the plaintiff relied on Exhibit 3 a document which had been rejected by both Courts and further on five documents, Exhibits 1, 4,5, 6 and 7 which certain recitals that the land in dispute was the property of one Adi Sikdar. The lower Appellate Court, differing from the first Court, has held that it has been proved that this Adi Sikdar was the predecessor-in-interest of the plaintiffs. These documents are documents of transfer of different properties adjoining the land in dispute and in the boundaries given in these documents Adi Sikdar's tank is mentioned Ah regards the admissibility of these documents, for the appellants, reliance is placed on the ease of Soroj Kumar Acharji v. Umed Ali Howladar (2). There it was held that the question whether recitals in the boundaries of other lands in documents between the third parties, such as there are in the present case, are admissible in evidence under Section 11 or Section 13 of the Evidence Act is not free from doubt. But having regard to the resent decisions on the point it was held in that case that such documents were not admissible in evidence. That ruling certainly supports the contention raised on behalf of the appellants as regards admissibility under Section 11 or 13 of the Evidence Act, On behalf of the respondents reliance is placed on the cases of Abdullah v. Kunja Behari Lal 12 Ind. Cas. 149 : 16 C. W. N. 252 : 14 C. L. J. 407, and Imrit Chamar v. Sridhar Panday 18 Ind. Cas. 120 : 15 Q. L. J. 7 : 17 C. W. N. 108. In the former of these cases it was held that similar documents describing

boundaries were not relevant under Section 11 or Section 13 of the Evidence Act, but they might be admissible under Clause 12 Ind. Cas. 149 : 16 C. W. N. 252 : 14 C. L. J. 407, of Section 32 when they were the statements made by persons of the character described in the opening sentence of that section; that is to say, persons who are dead or who cannot be found or for other reasons there stated cannot be examined as witnesses. It is not shown in this case that the persons who appear in these documents to have made these statements come under the category described in that section. It is conceded on behalf of the appellants that there is some evidence apart from these documents to support the plaintiffs' case and that the case should go back for re hearing after excluding from consideration the inadmissible documents. When the case is heard the plaintiffs may be able to show that the facts are such as to make these statements admissible under Section 32, Clause 12 Ind. Cas. 149 : 16 C. W. N. 252 : 14 C. L. J. 407, and if they are able to do so on the evidence on the record this documentary evidence may be considered by the lower Appellate Court. But should they not be able to do so they must be excluded from consideration.

3. I accordingly decree this appeal and dismiss the cross-objection taken by the respondent. The appeal will be re-heard by the lower Appellate Court only on the point of the right of the plaintiffs to a decree in respect of plot No. 1116, the tank, and it will be decided on the evidence already on the record.

4. Costs will abide the result.

5. I make no order as to costs in the cross-objections.

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