

BOMBAY HIGH COURT

Mahadev Sakharam Parkar

Vs

Janu Namji Hatley

(Basil Scott, Kt., C.J. Russell and Chandavarkar .JJ Batchelor and Heaton, J.)

05.01.1912

JUDGMENT

Basil Scott, Kt., C.J.

1. We answer the question referred in the negative. Symbolical possession is not real possession nor is it equivalent to real possession under the Civil Procedure Code except where the Code expressly or by implication provides that it shall have that effect.

2. Sections 264 and 319 of the Code of 1882 prescribed and impliedly gave effect to symbolical possession under certain specified conditions but symbolical possession was neither prescribed nor recognised by Sections 265 or 318 of that Code or by the corresponding sections of the earlier Codes nor in our opinion do the Bengal Full Bench decisions, *Jitgobundhu v. Ram Chunder By sack*¹ and *Joggobundhu v. Purnanund*² suggest the contrary.

3. Under the new Code of 1908, Rule 35 (2) of Order XXI provides one additional case in which symbolical possession may be resorted to.

4. We overrule *Gopal v. Krishnarao*³ and *Mahadeo v. Parashram*⁴ which, we think, were wrongly decided.

Cases Referred.

1(1880) I.L.R. 5 Cal. 584

2(1889) I.L.R. 16 Cal. 530

3(1900) I.L.R. 25 Bom. 275

4(1900) I.L.R. 25 Bom. 358