

(1879) 07 AHC CK 0008

Allahabad High Court

Case No: None

Husain Shah and
Others

APPELLANT

Vs

Gopalrai and Another

RESPONDENT

Date of Decision: July 14, 1879

Citation: (1880) ILR (All) 428

Hon'ble Judges: Straight, J; Oldfield, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Oldfield, J.

The relief sought by the plaintiffs is to have the word "istimrari," or perpetual, cancelled in a deed of lease executed on the 19th July 1864, on the ground that this word was fraudulently entered in the deed by the defendants in collusion with the writer of the deed. It appears that the lessees, who are the defendants, respondents, before us, applied in the Revenue Court, u/s 39 of Act XVIII of 1873, to contest a notice of ejectment which the plaintiffs, appellants, had served on them, and in that matter they pleaded that they had a right of occupancy and held under a perpetual lease. The Revenue Court decided that no right of occupancy had accrued, since twelve years had not expired since the expiration of the ten years which was the term of the lease, i.e., from 1864 to 1874, but it went on to decide that, with reference to the entry of the word istimrari, the lease must be held to have been given in perpetuity. There is clearly some inconsistency in the finding, which makes the lease out to be at the same time for a term of ten years and in perpetuity, but we are not concerned with the point now. The lower Appellate Court has dismissed the suit on the ground that it is barred with reference to the decision of the Revenue Court. The decision of the lower Appellate Court cannot be maintained. The question in this suit is the fraudulent insertion in a deed of a word by which the intended character of the deed is altered, and the object of the suit is to have the terms of the

deed corrected. This is a, matter peculiarly within the jurisdiction of a Civil Court, and was not one of those which a Revenue Court was competent finally to decide in the matter of an application made u/s 39, Act XVIII of 1873, however sufficient the decision may have been for the purpose of disposing of that application. We reverse the decree of the lower Appellate Court and remand the case for trial on the merits. Costs to follow the result.