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(1910) 05 CAL CK 0003

Calcutta High Court

Case No: None

Manbodh Acharya		APPELLANT
	Vs	
Ankata Karu		RESPONDENT

Date of Decision: May 12, 1910

Citation: 6 Ind. Cas. 415

Hon'ble Judges: Sharf-ud-din, J; Holmwood, J

Bench: Division Bench

Judgement

1. This is a suit for damages between two sets of raiyats, the plaintiff alleging that the defendant had wrongfully come and cut way the crop on his lands. The damages were estimated at Rs. 46-12. The Munsif in the first Court found that the defendant had no possession or title in the land. The Court of appeal also found that he had no such possession and title and that, therefore, he Was liable to damages.

2. A preliminary objection is raised that no appeal lies in this case as such a case is cognizable by a Court of Small Causes on the authority of the case of Krishna Prosad Nag v. Maizuddin Biswas 17 C. 707. We find that this is so, and the ruling cited by the other side from Pamu Sanyasi v. Zamindar of Jayapur 25 M. 640 is a wholly different case being a case between landlord and tenant, or at any rate between the plaintiff who alleged that he had been the tenant of the defendant and the defendant, the alleged landlord. It is further argued on behalf of the defendant that the question of title was raised and decided in the proceedings. The authority of the Full Bench Ruling in Mohesh Mahto v. Sheikh Piru 2 C. 470 : 1 C.L.R. 33, is clear that no special appeal lies to the High Court in a-suit cognizable by the Small Cause Court although a question of title to immovable property has been raised and tried in the Court below. The issue which was principally one of possession and incidentally one of title had to be tried in order to decide whether the defendant was liable to damages. It is purely an incidental matter and we find was within the cognizance of the Court of Small Causes.

3. We are, therefore, of opinion that no appeal lies and this appeal must be dismissed with costs.