

(1923) 02 CAL CK 0004**Calcutta High Court****Case No:** S.A. No. 2552 of 1921

Durgaram Bose and others

APPELLANT

Vs

Tara Prosad Naik and others

RESPONDENT

Date of Decision: Feb. 20, 1923**Final Decision:** Allowed**Judgement**

1. This appeal arises out of a suit for recovery of possession of certain land after establishment of the plaintiffs title thereto. It has been found by the lower appellate Court that defendants Nos. 1 to 7 are landlords of the plaintiffs and are themselves occupancy raiyats. It has also been found that the plaintiffs are under-raiyats on the disputed land. Defendants Nos. 1 to 7, as has been stated above, constituted one body of joint landlords. Defendants Nos. 5, 6 and 7 it was alleged were minors. No guardian him having been appointed on their behalf the suit as against them was dismissed, by the lower appellate Court but the lower appellate Court having come to the conclusion that the plaintiffs had proved their possession of the land in question from July 1900 to June 1918 gave a decree against the adult defendants, that is defendants Nos. 1 to 4, It, is argued on behalf of these defendants who are the appellants before us that inasmuch as on the allegation of the plaintiff's defendants Nos. 1 to 7 constituted one body of joint landlords under whom the plaintiffs claimed to hold the lands in question and inasmuch as by reason of the plaintiffs' default the suit as against defendants Nos. 5, 6 and 7 was dismissed, the lower appellate Court should have held that the suit as against defendants Nos. 1 to 4 who constituted only a fractional body of landlords should also be dismissed. We think that this contention must prevail and in this view of the matter, there is no other alternative but to allow the present, appeal.

2. The plaintiffs have argued, however, that an opportunity should now; be given to them to have a guardian ad litem appointed on behalf of the minors. Now as to that, it is clear that the fact of the minority of defendants Nos. 5, 6 and 7 was brought to the notice of the plaintiffs in the written statement which was filed on behalf of

defendants Nos. 1 to 4 and that the plaintiff's had abundant opportunities since the date of the filing of the written statement to avail themselves of the provisions of the CPC for the purpose of appointing a guardian ad litem of defendants Nos. 5. 6 and 7. The plaintiffs did nothing and it is rather late in the day now to ask for a further opportunity of having defendants Nos. 5. 6 and 7 properly represented in this suit. We see no reason why we should listen to this prayer at this stage of the case and the result, therefore, is that the judgment of the lower appellate Court U set aside and that of the first Court restored with costs, both here and in the lower appellate Court.