

(1924) 01 CAL CK 0010**Calcutta High Court****Case No:** None

Promoda Sundari Dassi and

APPELLANT

Another

Vs

Khetra Bag and Others

RESPONDENT

Date of Decision: Jan. 17, 1924**Citation:** AIR 1925 Cal 186**Judgement**

1. This Rule was granted at the instance of the first party. The short point raised by the Rule is that the learned Magistrate was wrong in giving possession to the second party and ignoring a decree of a Civil Court, reliance being placed by the learned Vakil for the first party upon two cases to which we were referred, namely, Doulat Koer v. Rameswari Kosri (1899) 26 Cal. 625 and Atul Hazra v. Uma Charan Changdar 20 C.W.N. 796. Now the case for the first party is that a suit was brought against Khetra Bag who was then settled on the land and that this suit was decreed and that accordingly the Magistrate was not justified in ignoring this decree and finding, as he has done, possession with the second party.

2. Now it appears that the case for the second party was that some of them had purchased the land in question prior to the ejectment decree being passed against Khetra Bag. They also asserted that they were not parties to the ejectment suit and that they were not bound by the decree and that they had no notice thereof. Indeed, they go so far as to suggest that the first party knew all along of their purchase at the time the suit was instituted against Khetra Bag. Now in the present case it appears that the decree was not inter partes so far as some of the second parties are concerned. Moreover, it appears that it was an ex parte decree and that Khetra Bag did not appear to dispute the case. It further appears that only symbolical possession was given under the decree, notice of which was not probably brought to the attention of the second party. In the circumstances, we are not prepared to say that the case is covered by the decisions in Doulat Koer v. Rameswari Koer (1899) 26 Cal. 625 and Atul Hazra v. Uma Charan Changdar 20 C.W.N. 796 to which we have been referred.

3. I am not suggesting that the principles laid down in those cases are not correct, but they are distinguishable, I think, for the reasons which I have stated as affecting the decree in this suit. I am not, as at present advised, prepared to say that every civil decree passed *ex parte*, or a decree which is not *inter parties* is necessarily binding on a criminal Court. For those reasons, we think that the order of the Magistrate was correct and that we ought not to interfere with it.

4. The Rule is accordingly discharged.