

**(1934) 12 CAL CK 0007**

**Calcutta High Court**

**Case No:** None

Harish Chandra and Another

APPELLANT

Vs

Sheikh Kadir and Others

RESPONDENT

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**Date of Decision:** Dec. 5, 1934

**Citation:** AIR 1935 Cal 709 : 158 Ind. Cas. 702

**Hon'ble Judges:** R.C. Mitter, J

**Bench:** Division Bench

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### **Judgement**

R.C. Mitter, J.

This appeal is on behalf of the plaintiff and arises out of a suit for possession on declaration that the plaintiff has a jote right in the lands in suit. The plaintiff's case is that he purchased the lands in suit which comprise the holding of one Wahed Ali at an auction-sale in execution of a decree based on a mortgage. Thereafter, he took delivery of possession through Court and settled the lands with Adhidars, the said Adhidars having surrendered, he took possession in khas but thereafter was dispossessed by the defendants. The defendants' case is that the holding of Wahed Ali was a non-transferable occupancy holding. On the transfer of the entire holding at the mortgage sale from the original tenant Wahed Ali, the Chowdhuris who are admittedly the landlords to the extent of 12 annas 15 gandas share treated the holding as abandoned, granted a settlement to them, and it is on the basis of this settlement that they are rightfully in possession of the land.

2. The learned Subordinate Judge has found that the defendants are the tenants of the Chowdhuris although he has disbelieved the payment of selami by the defendants for the purposes of taking the settlement from the Chowdhuris. He has however believed the dakhilas which the Chowdhuris granted to the defendants. It has also been found that on the mortgage sale the holding in the eye of the law was abandoned. Certainly the Chowdhuri defendants could resist the claim to possession on behalf of the plaintiff in respect of that share and inasmuch as the principal defendants claim a derivative title from the Chowdhuris and as that title

has been found in their favour the plaintiff can have no claim for khas possession against them. In my judgment, the learned Subordinate Judge is quite right in dismissing the plaintiff's claim to possession in respect of 12 annas 15 gandas share which the principal defendants have got as tenants under the Chowdhuri landlords. The result is that this appeal is dismissed with costs to defendant 1. The Deputy Registrar's costs having already been put in, the other appearing defendants-respondents have got their costs.