

(1881) 04 CAL CK 0005

Calcutta High Court

Case No: None

Shah Ahmed Sujad
and Another

APPELLANT

Vs

Taree Rai and Others

RESPONDENT

Date of Decision: April 12, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 53
- Specific Relief Act, 1877 - Section 42

Citation: (1881) ILR (Cal) 343

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

On the second appeal it is urged before us that the lower Appellate Court was in error in reversing the Munsif's decree for confirmation of possession. The suit was brought on the 3rd May 1878, after the Specific Relief Act came in force. Section 42 of that Act says:---" Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion," &c. Now, in this case, no doubt, the plaint does not disclose any facts from which it could be said that the defendants either denied their title or were interested to deny it; but from the proceedings in the lower Court it was established, that, before the suit was brought, there was a dispute between the parties as regards the title of the plaintiffs. That being so, although, u/s 53 of the Procedure Code, the Munsif might have rejected the plaint on the ground that it did not disclose any cause of action for maintaining a suit for declaration of title and confirmation of possession, yet a decree having been passed by the Munsif upon the merits, it was too late for the Appellate Court to reverse that decree upon the ground that the plaint did not disclose any cause of action for declaration of right and confirm action of

possession. The Appellate Court could only reverse the decree if it was satisfied, that not only the plaint did not disclose any cause of action for granting a declaratory decree, but that no such cause of action was established on the evidence. That cannot be said in this case, because it is quite clear from the written statement and other proceedings in the case, that there was really a dispute between the parties as regards the plaintiffs' title before the suit was brought. We, therefore, reverse the decree of the lower Appellate Court so far as it reverses the decree of the Munsif, and remand the case for retrial. Costs to abide the result.