

(1869) 06 CAL CK 0020

Calcutta High Court

Case No: Special Appeal No. 3263 of 1868

Jarif Gazi and Another

APPELLANT

Vs

Bholai Mandal

RESPONDENT

Date of Decision: June 7, 1869

Judgement

Loch, J.

In this case the plaintiffs sued to recover possession on the ground of holding under a mowrasi patta, and made the gantidars from whom they held the lease and also Nabin Gazi by whom they say they have been dispossessed, defendants in the case. The Judge in appeal has found that the plaintiffs held possession for not less than 10 years, and the Judge says that "as the defendants have failed to justify the dispossession of the plaintiffs of their own authority, and as they did not obtain the eviction of plaintiffs by process of law, the plaintiffs are entitled to be replaced in possession."

2. The Judge goes on to say "it does not lie with the Court to determine in this suit the terms on which the plaintiffs are entitled to hold the lands or whether they are entitled to hold the lands for a further period;" and he gave the plaintiffs a decree for possession.

3. In special appeal it is urged that the plaintiffs coming in upon a specific title, that is holding from the defendants under a mowrasi patta, were bound to prove their title; and we think that this contention is correct. The plaintiffs made the landlords parties to this suit, and we think that they cannot recover unless they prove the existence of their lease, and it is not sufficient for them merely to prove occupation for 10 years, the Judge not having found more than that period in their favour; and there is no proof of mowrasi tenure. It would be useless to remand the case, we therefore reverse the decree of the lower appellate Court, and affirm the decree of the Court of first instance, and the appellant will get his costs of all the Courts.