

(1979) 10 CAL CK 0002

Calcutta High Court

Case No: C.R. No. 2005 of 1978

Priyalal Das

APPELLANT

Vs

Sadhana Kar

RESPONDENT

Date of Decision: Oct. 23, 1979**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 2, 47
- Evidence Act, 1872 - Section 114

Citation: 84 CWN 322**Hon'ble Judges:** M.M. Dutta, J**Bench:** Single Bench**Advocate:** Rabindra Nath Mitra and Subhas Chandra Basu, for the Appellant; Tapas Kumar Mukherjee, for the Respondent

Judgement

M.M. Dutta, J.

This Rule is at the instance of the plaintiff decree holder and it is directed against order No. 31 dated May 30, 1978 of the Munsif, 1st Court Chinsurah. By the said order, the learned Munsif allowed the application of the judgment debtor opposite party u/s 47 of the Code of Civil Procedure. The plaintiff got a decree for ejectment against the opposite party. Thereafter the plaintiff put the said decree into execution. The opposite party filed an application u/s 47 of the CPC inter alia alleging that after the passing of the decree there was an agreement between the plaintiff and herself. Under the said agreement, the opposite party would pay a sum of Rs. 400/- to the plaintiff and would go on paying a monthly sum of Rs. 25/- on account of rent of the disputed premises. Further, it was agreed that the opposite party would not prefer any appeal against the decree. The Plaintiff did not file any objection to the said application u/s 47, but he opposed the application at the hearing, the learned Munsif believed the evidence of the witnesses examined on behalf of the opposite party and came to the finding that there was such an agreement between the petitioner and opposite party. Is that view of the matter,

the learned Munsif allowed the application u/s 47. Hence this, Rule.

2. Mr. Robin Mitra, Learned Advocate appearing on behalf of the petitioner submits that the learned Munsif has exercised a jurisdiction not veted in him by law by accepting an uncertified adjustment of the decree. Further he submits that the Learned Munsif has made certain presumption u/s 114 of the Evidence Act which he could not do as no such presumption arose. The principal question that was to be decided by the learned Munsif was whether there was an agreement between the petitioner and the opposite party about the creation of a new tenancy. There is a distinction between adjustment of a decree either whole or in part and subsequent agreement creating a new right or liability between the parties. In the instant case, a new right has been created by the alleged agreement, viz, that the opposite party was granted a fresh tenancy in respect of the disputed premises at an enhanced monthly rent of Rs. 25/-. Further she was to pay a sum of Rs. 400/- to the decree-holder petitioner. Her allegation was that she had paid the said sum to the petitioner, but he did not grant any receipt. That allegation has been believed by the learned Munsif. Indeed two witnesses were examined by the opposite party in support of her case that she had paid a sum of Rs. 400/-. The learned Munsif has believed the evidence of these two witnesses. In the circumstances, I do not think that I shall be justified in interfering with the finding of the learned Munsif which is a finding of fact. The provision of order 21 Rule 2 of the CPC has no application in the circumstances of the case.

For "the reasons aforesaid, this Rule is discharged, but there will be no order for costs.