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(1917) 06 CAL CK 0025

Calcutta High Court

Case No: None

Paran Chandra Karmakar and Others	APPELLANT
Vs	
Khazez Mandal	RESPONDENT

Date of Decision: June 25, 1917

Citation: 42 Ind. Cas. 262

Hon'ble Judges: Newbould, J; Fletcher, J

Bench: Division Bench

Judgement

Fletcher, J.
The judgment in this case must be set aside and the case mast go back to be re-heard by the learned Judge of the lower Appellate Court. The point in this case is this: The plaintiffs" title is admitted. They claimed to eject the defendant on the ground that the defendant held a subordinate interest which had terminated, namely, an under-raiyati interest which had been determined by a notice to quit. The defendant alleged that he had a larger interest than that of an under-raiyat, and, therefore, was not liable to be ejected. The learned Judge held that the onus was on the plaintiffs. I do not agree with the learned Judge. The authorities in this Court are clearly the other way. In addition to the cases referred to by the learned Judge, the following authorities may be referred to, namely, the oases reported as Hiramoti Dassya v. Annoda Prosad Ghosh 7 C. L. J. 553. Baraik Kamal Sahi v. Lilhu Christian 8 C. L. J. 170. and Bhagwat Buksh Roy v. Sheo Pershad Sahu 21 Ind. Cas. 481: 18 C. L. J. 277: 18 C. W. N. 297. The learned Judge recognised the rule, but was of opinion that the rule only applied to cases falling within the provisions of the Transfer of Property Act, There is no such distinction. The cases that I have cited show quite clearly that the rule equally applies to a case coming under the provisions of the Bengal Tenancy Act. The present appeal must, therefore, be allowed, the decree of the lower Appellate Court must be set aside and the case must go back to the learned Judge of that Court to be re-heard after properly placing the onus of proof that the defendant has a larger interest than an under-raiyati one. Costs will abide the result of the re-hearing by the learned Judge of the lower Appellate Court.

Newbould, J.

2. I agree.