

(1919) 02 CAL CK 0034

Calcutta High Court

Case No: None

Afsuruddin and Another

APPELLANT

Vs

Abdul Hossein and Others and
Akram Ali and Others

RESPONDENT

Date of Decision: Feb. 10, 1919

Citation: 50 Ind. Cas. 314

Hon'ble Judges: Walmsey, J

Bench: Single Bench

Judgement

Walmsey, J.

The plaintiffs, who are now respondents, brought the suit to recover possession of a small piece of land. They failed in the first Court but on appeal they were successful. About the land comprised in schedule kha there is now no dispute. The appeal relates to the land comprised in schedule ga. It appears that the defendants took settlement from the landlord in Aswin 1319. The boundary of the land on the south was described as khas patit. In Pous of the following year the plaintiffs took settlement from the same landlord. Within their patta the northern boundary was given as land comprised in the jote of the defendants; so that the question relates to the boundaries on the south of the defendants' land and on the north of the plaintiffs' land. The learned Munsif, as I have said, found in favour of the defendants. On appeal the question which appears to have been argued before the learned Judge was simply whether the land lay inside the defendants' boundary or not, and the decision of the lower Appellate Court was that it did not lie within the defendants' boundary and was not part of the land demised to them. On that finding it decreed the suit. The defendants have now preferred this appeal and the argument which is pressed before me is this that the finding of the first Court that the defendants were in possession of the schedule ga land before the settlement with the plaintiffs has not been displaced by the lower Appellate Court, and that from that possession an implied tenancy may be inferred, more especially in view of the words contained in the patta to the defendants, namely, aiyi kabuliyater likhit

chouddihr bahire ki bhitare atiricta je kachamer jato jamite amar dakhil sabyastha haibe tahar khajna tatkalin dharja nirikhe diya bandobasto kariya laib. It appears to me that this argument must prevail. The first Court found that possession was with the defendants, and the same view underlies the remarks made by the learned Judge. That being BO, on the terms of the patta it appears to me clear that the landlord was bound to recognize the defendants as his tenants of the land of which they had taken possession immediately to the south of the land demised to them, and, therefore, he was not in a position to lease the same land to the plaintiffs; and it follows from that that the plaintiffs cannot recover possession of the land from the defendants. In this view I allow the appeal and dismiss the plaintiffs' suit so far as the land comprised in schedule ga is concerned with costs of the appeal in this Court and with proportionate costs in the lower Courts.