

**(1919) 02 CAL CK 0036****Calcutta High Court****Case No:** None

Sheikh Kasem and Others

APPELLANT

Vs

Kasimuddin and Others

RESPONDENT

**Date of Decision:** Feb. 3, 1919**Citation:** AIR 1919 Cal 53 : 50 Ind. Cas. 290**Hon'ble Judges:** Ernest Fletcher, J**Bench:** Single Bench**Judgement**

Ernest Fletcher, J.

This appeal is preferred by the plaintiffs against a decision of the learned Subordinate Judge of Faridpur, dated the 12th February 1917, reversing a decision of the learned Munsif of Bhanga, dated the 6th August 1915. The suit was brought by the plaintiffs for recovery of possession of certain land on the ground that the defendants were under raiyat, and they were served with a notice to quit under the terms of Section 49 of the Bengal Tenancy Act. The defendants set out a case that they were raiyats and had a right of occupancy. The lower Appellate Court has found that the defendants were under raiyats but that they had a right of occupancy in the land.

2. It is stated that the plaintiffs were taken by surprise and that, therefore, the case ought to go back to the first Court to be re-tried, I do not think that the plaintiffs could be taken by surprise. They had the Record of Rights before them at the time of institution of the suit and an entry in the record shows that the defendants had an under-raiyati interest with a right of occupancy. The presumption as to the correctness of that document relates to this land and unless the plaintiffs established that the record was wrong, the Court might dismiss the suit on the ground that the plaintiffs had not displaced the presumption contained in the Record of Rights. Therefore, the plaintiffs must have known at the very outset that they were bound to displace the entry in the Record of Rights. They have not done so, and, therefore, the suit was rightly dismissed.

3. The present appeal fails and must be dismissed with costs.