
Sheikh Kasem and Others Vs Kasimuddin and Others

None

Court: Calcutta High Court

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.