

(1923) 03 CAL CK 0027

Calcutta High Court

Case No: None

Jnanendra Nath Mookerjee

APPELLANT

Vs

Brahmapada Pramanick

RESPONDENT

Date of Decision: March 19, 1923

Citation: AIR 1923 Cal 704 : 79 Ind. Cas. 191

Hon'ble Judges: Cuming, J; Chatterjee, J

Bench: Division Bench

Judgement

1. The question involved in this appeal turns upon the construction of a decree obtained by the appellant against the respondent in a suit for recovery of possession.

2. It appears that the suit was for ejectment of the defendant from certain land on which there were some huts. The huts are found by both the Courts below to belong to the plaintiff. There was no reference to the huts in the plaint in that suit but the decree in that suit was as follows:

The suit being decreed with costs and interest, plaintiff will get khas possession of the disputed land on ejecting the defendant there from, as prayed. The defendant himself must remove all his personal properties from the disputed land within one month. In default the plaintiff will have to remove the same with the help of the Court and he will get khas possession of the said land.

3. In execution of the decree, the plaintiff obtained khas possession of the land by turning out the defendant. The defendant thereupon applied to the Court below for restoration to possession of the huts and an order has been made in his favour by the Courts below on the ground that there was no reference to the huts in the decree for ejectment.

4. It is true that the huts are not referred to in the decree. The question, however, is whether upon a proper construction of the decree the plaintiff was entitled not only

to that land but was entitled to turn out the defendant from the huts as well.

5. As stated above, the huts have been found to belong to the plaintiff, and if the plaintiff was to get khas possession by ejecting the defendant from the land, it is difficult to see how khas possession could be given if the defendant were to retain possession of the huts. If, however, they belonged to the defendant, the decree directing khas possession by ejecting the defendant, would necessarily give the plaintiff a right to khas possession as against the defendant in respect of the huts also.

6. The case of Henry Maseyk v. Lyons 5 W.R. (Mis) 49, relied upon by the respondent, turned upon the construction of the terms of the decree in that case; and it is to be observed that there was no order directing the defendant to be turned out from the land in that case.

7. In these circumstances, we think the orders of the Courts below must be set aside and we direct accordingly. The effect of setting aside the orders of the Courts below would be that the possession, as originally delivered to the plaintiff, would stand.

Each party to bear his own costs in all Courts.