

(1953) 12 CAL CK 0022

Calcutta High Court**Case No:** Appeal from Appellate Decree No. 475 of 1953

Gayanath Mondal

APPELLANT

Vs

Rampada Mondal

RESPONDENT

Date of Decision: Dec. 10, 1953**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 10(2), Order 26 Rule 9
- Court Fees Act, 1870 - Section 8

Citation: (1955) 2 ILR (Cal) 234**Hon'ble Judges:** P.N. Mookerjee, J**Bench:** Single Bench**Advocate:** Apurbadhan Mukherjee and Gopal Chandra Narayan Chowdhury, for the Appellant; Hemendra Kumar Das and Arun Kishore Das Gupta, for the Respondent**Final Decision:** Dismissed

Judgement

P.N. Mookerjee, J.

This appeal arises out of a suit for declaration of title and recovery of possession. The Defendant is the Appellant before me. The Plaintiff's case was that the Defendant, who is his sister's husband, was in occupation of the suit property as a licensee under him.

2. The defence was a claim of tenancy under the Plaintiff.

3. Both the Courts below have rejected the defence and granted the Plaintiff a decree. Hence, the present appeal.

4. In support of the appeal Mr. Mukherjee appearing for the Defendant-Appellant contended first that the Courts below were wrong in relying upon the commissioner's report which is ex. 1 in the case. According to him, this report was submitted by the commissioner on an enquiry u/s 8(c) of the Court Fees Act on the question of valuation, and that, accordingly, it was not admissible as evidence in the

suit without examination of the commissioner. Admittedly, the commissioner was not examined in the case. But the lower appellate Court has specifically relied upon the provisions of Order XXVI, Rule 10, Sub-rule (2) of the Code of Civil Procedure. In my opinion, the learned Subordinate Judge was right in so doing. It was clearly a report contemplated by Rule 9 of Order XXVI of the Code of Civil Procedure, and as such it was evidence in the suit and became part of the record under Sub-rule (2) of Rule 10 of that order. I do not find any substance in the objection of Mr. Mukherjee that this report was not admissible in evidence. The second point urged in support of the appeal was that the evidence in the case was not properly considered by the two Courts below. I have been taken through the plaint and the written statement and I have also looked into the discussion of evidence in the judgments of the two Courts below. That discussion, on the materials placed before me, does not appear to be wrong. At any rate, there is no error which is revisable in second appeal. This point of Mr. Mukherjee must also therefore fail.

5. In the result, the points urged in support of this appeal fail. The appeal is, accordingly, dismissed.

6. In the circumstances of this case and having regard to the relationship between the parties, I make no order for costs.