

(1918) 01 CAL CK 0051

Calcutta High Court

Case No: None

Prasanna Deb Raikat

APPELLANT

Vs

Darpa Narayan Singh and
Another

RESPONDENT

Date of Decision: Jan. 14, 1918

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 23 Rule 3

Citation: AIR 1919 Cal 458(1) : 44 Ind. Cas. 145

Hon'ble Judges: Richardson, J; Beachcroft, J

Bench: Division Bench

Judgement

1. This is an appeal from two orders of the Subordinate Judge of Darjeeling both dated the 18th May 1917. It appears that the suit in which these orders were made was instituted by the plaintiff, the appellant before us, on the 23rd April 1917, to eject the defendants from certain lands on the footing that having been tenants under the plaintiff their tenancy had been determined by a notice to quit. On the 18th May 1917 the defendants filed written statements by which they confessed judgment. It further appears that the same defendants were the mortgagor defendants in a suit previously instituted by the mortgagee on his mortgage in 1916. In that suit the question arose whether a Receiver of the property should be appointed, a question which was decided in the affirmative. In the present suit, an application was made on behalf of the Receiver on the 21st May 1917, that he should be added as a party defendant. Meanwhile on the 18th May 1917, the day on which the written statement was filed, the plaintiff and the defendants in this suit filed separate petitions by which the plaintiff prayed for judgment and decree against the defendants and the defendants stated that they consented to a decree being made against them. The present appeal is from the orders made on those petitions, and a preliminary objection is taken that these orders rejecting the petitions are not orders from which an appeal lies under the Code of Civil

Procedure. It is suggested on behalf of the appellant that the petitions taken together amount to a lawful agreement or compromise within the meaning of Rule 3 of Order XXIII. In the Court below, however, the matter does not appear to have been presented or dealt with on that basis. The learned Subordinate Judge in one of the orders in question referred to Rule 6 of Order XII, and in our opinion the substance of the matter is merely this, that the learned Subordinate Judge was moved by the parties to make a decree on the footing that the defendants had admitted the facts stated in the plaint and confessed judgment. In that view of the matter no appeal lies and this appeal must be dismissed with costs. We assess the hearing fee at 2 gold mohurs. The costs of the paper-book prepared by the respondents will be borne by the appellant after being assessed by the office.