

(1925) 11 CAL CK 0027

Calcutta High Court

Case No: None

Srikanta Mandal and Others

APPELLANT

Vs

Rani Jotirmoyi Devi and Others

RESPONDENT

Date of Decision: Nov. 24, 1925

Citation: 94 Ind. Cas. 253

Hon'ble Judges: Cuming, J; B.B. Ghose, J

Bench: Division Bench

Judgement

1. In the suit out of which this appeal has arisen the plaintiffs sued for recovery of possession with mesne profits from 32 defendants. Their case was that they had taken settlement of some 98 bighas odd of land from defendant No. 32 or rather his predecessors-in-interest. Out of this area of 98 bighas they were only in possession of some 63 bighas odd and their case was that defendant No. 32 in collusion with the other defendants had dispossessed them from these 35 bighas. The suit was decreed by the first Court. On appeal to the District Court a part of the claim was disallowed. The plaintiffs appealed to the High Court and the High Court allowed the appeal in part and the decision of the learned District Judge so far as he dismissed the claim for the lands of schedule (ga) was set aside and the case was remitted to him so that he might re-consider the question of the land of schedule (ga).

2. The learned District Judge allowed the Appeal No. 28 in part and the judgment of the Subordinate Judge was modified to a certain extent which is unnecessary to specify. The plaintiffs have appealed to this Court.

3. The respondents have raised a preliminary objection that the appeal is incompetent for want of necessary parties. They point out that four persons Abdul Hossain, Gudath Biswas, Abdul Aziz and Gooljan Bibi who were appellants in the lower Court and who were also respondents in the present appeal have died and their heirs have not been brought on the record. This is admitted by the appellants themselves. It is clear that the appeal cannot proceed in their absence. The case of the plaintiffs is as that all the defendants jointly dispossessed them from the land in

collusion with each other and they sued for mesne profits from them all. The claim of the plaintiffs is not divisible. The appeal is, therefore, incompetent for want of necessary parties and must fail.

4. The appeal is, therefore, dismissed with costs.