

**(1920) 05 CAL CK 0046**

**Calcutta High Court**

**Case No:** None

Lambonath Das Barua

APPELLANT

Vs

Sarunath Dutta Barua and  
Another

RESPONDENT

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**Date of Decision:** May 13, 1920

**Citation:** 61 Ind. Cas. 775

**Hon'ble Judges:** Asutosh Mookerjee, Acting C.J.; Ernest Fletcher, J

**Bench:** Division Bench

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### **Judgement**

Asutosh Mookerjee, Acting C.J.

1. This is an appeal on behalf of the plaintiff in a suit for recovery of possession of land on establishment of title. The question in controversy is, whether there has been a proper trial of the suit.

2. The examination of the parties and their witnesses in the Court of first instance commenced on the 17th September 1915. By the 29th September, the plaintiff and all his witnesses were examined, and the first defendant and some of his witnesses were also examined. With the consent of both the parties, the 8th October 1915, which was a Civil Court holiday, (the first day of the annual vacation) was fixed for the examination of the remaining witnesses to be produced by the defendants. On that date, the plaintiff could not bring any Pleader to cross-examine the witnesses. The Court thereupon adjourned the suit till the next day. The plaintiff, however, could not bring any Pleader on the 9th October and two witnesses were examined on that day but were not cross-examined by the Pleader for the plaintiff nor by the plaintiff, himself. In these circumstances, the suit was ultimately dismissed. Upon appeal, the decree of dismissal has been affirmed by the District Judge.

3. Our attention has been drawn to Rule 2 of Chapter I of the Rules relating to Practice and Procedure in the District Courts which provides as follows: "Without the consent of parties and, in the absence of urgent necessity, no civil trial should

proceed on Sundays or Gazetted holidays," Now, in so far as the 8th October was concerned, the parties had given their consent, and consequently if the trial had been concluded on that day neither party could have challenged the decision on the ground that the trial had taken place on a Gazetted holiday. This view is supported by the decisions in *Ram Das Chakarbati v. Official Liquidator of the Cotton Ginning Company Ltd.*, Cawnpore 9 A. 366 : A.W.N. (1887) 34 : 5 Ind. Dec. (N.S.) 679 and *Sheoram Tiwari v Thakur Prasad* 30 A. 136 : 5 A.L.J. 106 : A.W.N. (1908) 43 : 3 M.L.T. 211. These cases affirm the rule laid down in *Bennett v. Potter* (1832) 2 C. & J. 622 : 1 L.J. Ex. 258 : 149 E.R. 262 and *Andrews v. Elliott* (1855) 5 El. & Bl. 502 : 25 L.J.Q.B. 1 : 1 Jur. (N.S.) 1046 : 103 R.R. 585 : 119 E.R. 566 : affirmed on appeal (1856) 6 El. & Bl. 338 : 25 L.J.Q.B. 386 : 2 Jur. (N.S.) 663 : 4 W.R. 527 : 106 R.R. 623 that if a judicial proceeding is taken up on a close holiday, it is an irregularity which does not affect the jurisdiction of the Court and may be cured by the consent of the parties. Here, however, the trial was not concluded on the 8th October, the case was adjourned till the 9th October. There was no consent by either party to this adjournment of the case till the next day, which also was a close holiday. We must hold accordingly, that the proceedings of the Trial Court were irregular, and we may add that there can be little doubt that this irregularity had prejudiced the plaintiff.

4. The result is that this appeal is allowed, and the case remitted to the Court of first instance to be re tried in accordance with law. Costs will abide the result.

Fletcher, J.

5. I Agree.