

(1924) 12 CAL CK 0043

Calcutta High Court

Case No: None

Umedali Munshi

APPELLANT

Vs

Goyjaddi Molla and Another

RESPONDENT

Date of Decision: Dec. 4, 1924

Citation: AIR 1926 Cal 114 : 87 Ind. Cas. 672

Hon'ble Judges: Ewart Greaves, J; Chakravarti, J

Bench: Division Bench

Judgement

Ewart Greaves, J.

This is an appeal by the principal defendant in a suit for ejectment. The plaintiffs' case was that they with the pro -forma defendants owned 8-annas of the defendant's jama and the first defendant was an under-raiyat. The allegation of the first defendant was that he was an occupancy raiyat and that he had held the land for more than 20 years.

2. The two points urged before us were, firstly, that the ex parte decree referred to in the judgment which was obtained by the plaintiffs against the defendant for rent and which was subsequently satisfied did not operate as res judicata as the lower Appellate Court has found that it did. It is stated that as there was no judgment at all but merely a decree passed it is impossible to say whether the issue was actually decided. But it seems to us that this argument is untenable, and that the lower Appellate Court was quite-right in holding that the ex parte decree which was subsequently satisfied operated as res judicata on the question of landlord and tenant.

3. Secondly, it is urged that the lower Appellate Court was wrong in finding that" the plaintiffs were the sole landlords. This matter, however, seems to us to have been decided by the ex parte decree as the lower Appellate Court has found. These are the only questions that were urged before us and for the reasons which I have stated they do not seem to be of any weight.

4. The appeal, accordingly, fails and must be dismissed with costs.

Chakravarti, J.

5. I agree.