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(1869) 06 CAL CK 0056

Calcutta High Court

Case No: Special Appeal No. 3014 of 1868

Srimati Sadattunnissa  
and Others

APPELLANT

Vs

Sadat Ali

RESPONDENT

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Date of Decision: June 12, 1869

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### Judgement

Hobhouse, J.

This was a suit for possession of lands, the plaintiff's allegation being that the defendant held those lands on a lease which expired in the year 1227 (1820), and that after the expiry of that lease the defendant refused to turn out, and hereby gave the plaintiff his cause of action. The defendant set up an istemrari patta, and pleaded in the first Court that the Civil Court had no jurisdiction, the case being one which was determinable only by the Revenue Courts under the provisions of clause 5, section 23, Act X of 1859.

2. On the question of the jurisdiction the first Court found for the plaintiff, but on the merits it dismissed the case. The question of jurisdiction was not determined by the lower appellate Court nor was it raised there, and on the merits the lower appellate Court found against the defendant's istemrari tenure, and gave the plaintiff a decree for possession.

3. In special appeal, it is urged, that under the provisions of clause 5, section 23, Act X of 1859, the Civil Court had no jurisdiction. That clause, for the purposes of this suit, declares that "all suits to eject any ryot on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, shall be cognizable by the Revenue Courts only." The question therefore before us is whether this suit was a suit to eject a ryot by reason of the breach of the conditions of any lease by which that ryot was liable to ejectment. Clearly this was not the allegation of the plaintiff, nor the issue between the parties. The plaintiff did not say that under the terms of the contract between him and the ryot, the ryot was liable to ejectment, but what he said was that there was no contract between him and the ryot; that whatever contract there had been, had expired, and that therefore the ryot held on, not contrary to any conditions of a contract by which he was liable to ejectment, but as a trespasser without any contract at all; and the ryot himself on

his part denied that there had ever been any contract of the nature set up by the plaintiff, or that he was a trespasser, and set up another contract in respect of which the Courts have found against him. The case therefore is clearly in our judgment one cognizable by the Civil Court, and so the special appeal is dismissed with costs.