

(1909) 03 CAL CK 0060

Calcutta High Court

Case No: None

Gobind Prosad

APPELLANT

Vs

Kazi Basir-Ud-Din and
Others

RESPONDENT

Date of Decision: March 12, 1909

Judgement

1. The only point for decision in this case is whether the Secretary of State for India was a necessary party to the suit. The suit is substantially one for recovery of possession of a certain property sold under a certificate issued under the Public Demands Recovery Act. A certificate was issued against Wahidunnessa. She was the widow of Imad-ud-din, who died in the lifetime of his mother. According to the plaintiff's case, Wahidunnessa was not one of the heirs of Imad-ud-din and, therefore, had no interest in the property. The plaintiffs alleged that they were the heirs of Imad-ud-din. They, therefore, asked for a declaration that they are entitled to the property and that the sale could not affect their title; and, in the alternative, they asked that, in case the Court held that the effect of delivery of possession under the sale was to oust them from possession of the property, possession might be awarded to them.

2. The first Court dismissed the suit on the ground that the Secretary of State was a necessary party and that he not having been made a party, the suit could not be maintained.

3. On appeal, the learned Subordinate Judge has held that having regard to the nature of the suit, the Secretary of State was not a necessary party and has accordingly set aside the judgment and remanded the case to the first Court for trial on the merits.

3. We think that the case of Gobinda Chandra Shaha v. Hemanta Kumari Debi 8 C.W.N. 657, can have no application to the case set up in the plaint. The certificate was not issued against the plaintiffs and, therefore, any sale which took place under that certificate could not affect their interest. The real object of the suit is not to set

aside the sale but to obtain a declaration that the sale has not affected the title of the plaintiffs.

4. For these reasons, we think that the judgment of the Court below should be affirmed and the appeal dismissed.

5. The above judgment governs Appeal from appellate order No. 303 of 1907.

6. We assess costs at one gold mohur in each case.