

(1918) 05 CAL CK 0027
In the Calcutta High Court

Aghore Nath Banerjee

APPELLANT

Vs

Kalyaneswari Dasi and Others

RESPONDENT

Date of Decision : 22-05-1918

Acts Referred:

Citation : 46 Ind. Cas. 883

Hon'ble Judges : Syed Shamsul Huda, J; Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal preferred by the defendant No. 1 against the decision of the learned District Judge of Birbhoom, affirming the decision of the Munsif of Suri. The suit was brought for possession of certain land. The land was originally what is called the Ghat Chaukidari Chakran land held by the second defendant. The tenure was resumed by the Government, and the question is whether the plaintiffs are entitled to it or whether the defendant No. 1 should get it. The plaintiffs are the Zemindars or the proprietors of the Mouza within the ambit of which the land in suit lies. The defendant No. 1 purchased at a sale for arrears of Government revenue an estate which had been formed of portions of Ghat Chaukidari Chakran lands in the district. The land in suit did not form a portion of the land comprised in that new estate. It is said that it was omitted by mistake. It makes not much difference whether it was omitted by mistake or not: one thing is quite obvious that the defendant No. 1 as the purchaser of the newly formed estate at the sale for arrears of revenue cannot claim any interest in the land in suit. His point is that he got an express settlement of this land from the Collector on the 26th September 1910. Two questions are raised in this appeal and they are as follows: First of all, it is said that the Collector had no jurisdiction having regard to the terms of the order of the Government of Bengal to settle this land with the defendant No. 1 and secondly, it is urged by the defendant No. 1 that the present suit is barred under the provisions of Article 14 of the First Schedule to the Indian Limitation Act. The order of the Government of Bengal which is in writing seems to be perfectly clear. The settlement that was directed by that order was a settlement with the Zemindars within the ambit of whose

estates the land about to be resumed was situated. It never authorized the Collector to make a settlement in the first instance with an outsider. The mere fact that the Collector or his predecessor, even if it be true, committed an error does not entitle the defendant No. 1 to get rid of the rights of the plaintiffs by dealing with the matter as if it had been rightly resumed and made a portion of the newly formed estate and, therefore, formed part of the property which was sold for arrears of Government revenue. That disposes of the first point.

2. Then as regards the question of limitation, obviously there cannot be limitation in this case. The order of the Collector was authorized. The Government, of Bengal directed him to deal with the matter in a particular way and, in disregard of that order, he dealt with it in a different way. The order of the Collector was wholly ultra vires and nugatory.

3. I agree with the result arrived at by the learned Judges of the two lower Courts. The present appeal, therefore, fails and must be dismissed with costs.

Syed Shamsul Huda, J.

4. I agree.