

(1917) 07 CAL CK 0056
In the Calcutta High Court

Baikanta Nath Chatterjee and Others

APPELLANT

Vs

Lakshan Chandra Chatterjee and Others

RESPONDENT

Date of Decision : 17-07-1917

Acts Referred:

Citation : 41 Ind. Cas. 875

Hon'ble Judges : Newbould, J; Fletcher, J

Bench : Division Bench

Judgement

1. This appeal, which has been preferred against a decision of the learned Additional District Judge of the 24-Pergannahs reversing the decision of the Munsif at Baruipur, must be dismissed. The plaintiffs who are the appellants before us brought the suit with reference to an encroachment on a road and the removal of the trees growing thereon, which they alleged to be the property in iimali between them and the defendants and also with reference to the excavation of a Khal in certain property which the plaintiffs alleged had fallen into their sole lot in a certain partition proceeding. The persons said to have encroached upon the road were the defendants Nos. 1 and 2. The other defendants are said to have excavated the Khal. Certain incidental and consequential reliefs were also asked for. The learned Munsif decreed the suit against all the defendants disbelieving a certain document Exhibit A which was stated to be an istimrari mourasi makarrari patta. The first two defendants appealed to the learned Additional District Judge. There the learned Additional District Judge accepted the istimrari mourasi mokarari patta as being a genuine document and, on that footing, he held that the defendants Nos. 1 and 2 who were the appellants before him were justified in doing the acts complained of. Here, it has been argued in the first instance that the document is not a permanent heritable lease but is a lease for the life of the grantee, on the ground that there are no words in this lease that commonly appear in documents creating a permanent lease stating that the grantee, his sons and grandsons in succession should enjoy the property in perfect felicity so long as the moon and the stars last. Of course, it is not necessary to use all these words, that the

grantee, his sons and grandsons in succession should enjoy the property in perfect felicity and that the grant is for the period so long as the moon and the stars last, in a document of this nature. It would be quite sufficient if other words indicating a heritable interest are used. The words *istimrari mourasi mokorrari* have always been held to mean permanent and heritable.

2. Another point has been urged by Mr. Roy which, if established, would have been a good point, and that is that the appeal to the lower Appellate Court had been preferred by the defendants Nos. 1 and 2 only but the learned Additional District Judge has set aside the whole decree made by the Munsif. An examination of the record, however, shows that that is not so. The learned Judge only-set aside the Munsif's decree in so far as it affected the defendants Nos. 1 and 2. That is clearly right.

3. The present appeal, therefore, fails and must be dismissed with costs.