

(1925) 06 CAL CK 0057
In the Calcutta High Court

Durga Prosad Lahiri Choudhuri and Others

APPELLANT

Vs

Ratan Mahommed Sarkar

RESPONDENT

Date of Decision : 24-06-1925

Acts Referred:

Citation : 92 Ind. Cas. 897

Hon'ble Judges : Cuming, J;Chakravarti, J

Bench : Division Bench

Judgement

Chakravarti, J.—This is an appeal by the defendants and arises out of a suit for possession of a share of a jote by the plaintiff. The main ground of defence was that the suit was barred by the special Law of Limitation as provided for in Article III of Schedule III to the Bengal Tenancy Act. This defence was given effect to by the Trial Court and the suit was dismissed. On appeal by the plaintiff the learned Subordinate Judge of Dinajpur has found that the plaintiff has purchased a share of the jote from the owners thereof and that dispossession was by one Jogendra who had purchased also a share of the same jote. Although Jogendra was an officer of the defendant the landlord the finding of the lower Appellate Court is that Jogendra dispossessed the plaintiff as a purchaser of a share of the jote and not as an agent of the landlord. In this view the lower Appellate Court held that the suit was not barred by limitation and sent the case back to the learned Munsif for ascertaining the share which the plaintiff had purchased and on such ascertainment of the share the learned Subordinate Judge has directed the decree to be awarded to the plaintiff.

2. The only ground which was taken by the learned Vakil for the appellant was that the Trial Court had found that Jogendra was really a benamdar for the landlord the defendant as such the dispossession effected by Jogendra was the dispossession effected by the landlord. The learned Vakil for the appellant contended that the finding of benami arrived at by the Trial Court had not been specifically dealt with by the lower Appellate Court.

3. I do not think that this contention should prevail. The learned Subordinate

Judge found that Jogendra purchased the land and dispossessed the plaintiff as such purchaser and not as an agent of the landlord. I think the finding is quite sufficient for the purpose of holding that the dispossession was not by the landlord, nor was it on his behalf. Therefore it seems that the judgment of the lower Appellate Court is correct and this appeal should be dismissed with costs.

Cuming, J.

4. I agree.

In Appeal No. 49 of 1924.

5. Our judgment in the analogous Appeal No. 48 of 1924 will govern this appeal also.