

(1898) 11 CAL CK 0006

In the Calcutta High Court

Case No : Appeal From Order No. 162 of 1898

Har Kumar Pal Chowdry

APPELLANT

Vs

Sheikh Asiatullah

RESPONDENT

Date of Decision : 30-11-1898

Acts Referred:

Citation : (1898) 11 CAL CK 0006

Judgement

1. The judgment of the Subordinate Judge in this case cannot stand. It appears that the Plaintiff got a decree in the first Court for the ejectment of the Defendants. The Defendant appealed, and, in the interval between the original hearing and the appeal, the record, or the greater part of it, was destroyed in the earthquake. The Subordinate Judge on this has set aside the judgment of the first Court, and directed the suit to be tried de novo. The Plaintiff got a decree in the first Court, and it is for the Defendant to show that the decree was wrong. The mere fact that the record was accidentally destroyed cannot give the Defendant (Appellant) a right of retrial. It may be that he is placed in an unfortunate position, but the position of the Respondent might be equally unfortunate if the case had to be tried de novo. It is open to the Court of Appeal, the record having been destroyed, to try the case upon any materials proved to have been used at the hearing in the first Court, but it is for the Appellant to put those materials before the Court, and there is no doubt that the Court should give him every possible assistance in doing this.

2. The order of remand made by the lower Appellate Court must be set aside, and the case will go back to the Subordinate Judge to be disposed of. Costs of this appeal will abide the result.