

(1909) 06 CAL CK 0014
In the Calcutta High Court

Lalji Sahai Singh and Others

APPELLANT

Vs

Karki Jha and Others

RESPONDENT

Date of Decision : 17-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0014

Judgement

1. This is an appeal by the judgment-debtors against an order of the Subordinate Judge of Mozaffarpore, dated the 12th April, 1907. It arises in the following way. There was a man of the name of Beni Prosad. He left a widow Rojha Koer. The present appellants are the heirs of Beni Prosad. At sometime after Beni Prosad's death Rojha Koer possessed herself of a certain piece of land. From this, however, she was ejected by a suit which was decreed against her. This decree was first upheld by the lower appellate Court and afterwards by this Court in 1897. In 1899 Rojha Koer died. In 1906 the decree-holders in that suit applied to have the original decree amended by the insertion of an order as to mesne profits about which there was no mention in the original decree. At the same time the present appellants were joined as defendants u/s 234 of the Code as the heirs of Beni Prosad.

2. The question which we have now to consider is whether they are liable for mesne profits. The question has been decided against them, by both the lower Courts and we see no reason to differ from them. The matter in question has been settled by the decisions in the cases of Ram Kishore Chuckerbutty v. Kallykanto Chuckerbutty 6 C. 479 and Premmoyi Choudhrani v. Preonath Dhur 23 C. 636. In the former of these cases it was held that as a widow had instituted a suit for the benefit of the estate and not for her personal benefit, the next heirs of the husband were liable for her action. In the latter case the same principle was applied to make people in a somewhat similar situation liable for costs incurred by a Hindu widow. These cases seem to us to govern this case as it is held in the present case that Rojha Koer acted for the benefit of the estate of her husband and that she acted in good faith in taking possession of the property from which she was subsequently ejected.

3. The result is that this appeal is dismissed with costs.

4. This judgment will also govern Miscellaneous Appeals Nos. 488,489,490 and 491 of 1907 which are also dismissed with costs. We assess the hearing fee at one gold mohar in each case.