

(1925) 06 CAL CK 0042
In the Calcutta High Court

Mahendra Nath Bhunia and Others

APPELLANT

Vs

Ashutosh Pradhan and Others

RESPONDENT

Date of Decision : 22-06-1925

Acts Referred:

Bengal Tenancy Act, 1885 — Article 6
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : AIR 1926 Cal 545 : 91 Ind. Cas. 478

Hon'ble Judges : Graham, J; Babington Newbould, J

Bench : Division Bench

Judgement

1. This is an appeal against an order of the District Judge of Midnapur confirming an order of the Munsif Third Court, Tamluk. The order was passed on an application for execution and the only objection taken by the judgment-debtors was that the application was time-barred under Article 6 of the Third Schedule of the Bengal Tenancy Act. Both the lower Courts have over-ruled this objection. On appeal two points have been argued. The first is that the judgment of the lower Appellate Court is not in accordance with law as laid down in Rule 31 of Order XLI of the C.P.C. The judgment certainly is very short. But having regard to the simple nature of the issue to be decided in the appeal we are not inclined to hold that we should be justified in setting it aside on this ground. The judgment is one of affirmance and in a judgment of affirmance, it is not necessary for the Appellate Court to deal with the matter in dispute at the same length as would be necessary in a judgment of reversal. Our attention has been drawn to an earlier decision of this Court in *Kulumutee Koer v. Jowahur Lall* 11 W.R. 318 where the judgment of the lower Appellate Court is very similar to the judgment we have to consider and it was there held that the judgment was legally sufficient.

2. The important point is whether the Appellate Court has properly appreciated the point for determination on appeal and whether it has applied its mind to that point. In the present case we have no doubt that the learned District Judge has properly appreciated the point of limitation and has applied its mind to that

point. The suit in which the decree sought to be executed was obtained was framed as a suit for recovery of khas possession of the disputed lands on declaration of title thereto with an alternative prayer that if for any reason the plaintiff is not granted a decree for khas possession he should be given a decree for arrears, of rent. The suit was compromised and a decree was granted declaring that the defendant was a tenant of the plaintiff and that he was to pay him a sum of Rs. 200.

3. The question is whether that suit was a suit between the landlord and tenant to whom the provisions of the Bengal Tenancy Act are applicable so as to make Article 6 of the Third Schedule of that the Act applicable. In our opinion, the lower Courts were right in holding that it was not. The nature of a suit depends on the plaint and not on the decree. On the plaint the suit was certainly not one brought by a landlord against a tenant. By asserting his right to khas possession the plaintiff denied the existence of any tenancy when the suit was filed. That being so, the lower Courts were right in holding that Article 6 of the Third Schedule of the Bengal Tenancy Act was not applicable to the present application.

4. We, accordingly, dismiss this appeal with costs hearing-fee two gold mohurs.