
(1925) 07 CAL CK 0073
In the Calcutta High Court

Rafat Sheik and Others

APPELLANT

Vs

Sachindra Kumar Lahiri and Others

RESPONDENT

Date of Decision : 23-07-1925

Acts Referred:

Citation : AIR 1926 Cal 559 : 91 Ind. Cas. 761

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

Bench : Division Bench

Judgement

1. The only point urged in this second appeal is that the lower Appellate Court was wrong in holding that the onus was on the defendants to prove that the lands in suit were included in their tenancy. In this case the plaintiffs are admittedly the superior landlords of the lands in suit, these lands having fallen to their share of the estate after partition. For the appellants it is contended as was contended before the lower Appellate Court that it being admitted that they have tenancy under the plaintiffs it is for the plaintiffs to prove that the suit lands are out side the tenancy. The authorities are against this contention. It is sufficient to cite three cases reported as Gopini Debi v. Lokenath Tewari 11 Ind. Cas. 696 : 19 C.W.N. 140, Protap Chandra Roy v. Judhister Das 23 Ind. Cas. 69 : 19 C.L.J. 408 and Manners v. Harikar Dutt Koer 22 Ind. Cas. 563 : 19 C.W.N. 149. The passage most in point will be found in the head-note of the second of these cases. At page 144 Page of 19 C.W.N.--[Ed] it is stated. "It is not the law that because a defendant is found to be a tenant of some land under the plaintiff, the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant." It is contended on behalf of the appellants that these cases are distinguishable, because in them the landlord was the owner of a whole mouza or touzi. We find nothing in the rulings to indicate that anything turned on that point. The law is equally applicable in the case of a landlord holding zemindari interest, whether he is the owner of a mouza or is the owner of a specific portion of the lands of a mouza after partition.

2. The appeal is dismissed with costs to the respondents who appear.