

(1920) 07 CAL CK 0040
In the Calcutta High Court

Rahimuddin Kazi and Others

APPELLANT

Vs

Radha Govinda Bhoumik

RESPONDENT

Date of Decision : 16-07-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : 64 Ind. Cas. 238

Hon'ble Judges : Walmsley, J; Greaves, J

Bench : Division Bench

Judgement

Walmsley, J.—This appeal arises out of a rent suit. The landlord claimed the price of (sic) paddy at the rate of eight maunds of paddy par annum, The defendants admitted rent at the rate of Rs. 4 per annum. The first Court dismissed the suit altogether. On appeal by the landlord the learned Subordinate Judge decreed the suit. In disposing of the appeal, the Subordinate Judge admitted a Khatian taken from a recently published Record of Rights (the final publication apparently was made between the date of the Munsif's judgment and the date on which the appeal was heard), and he held that the evidence of the Khatian was enough to turn the scale in favour of the plaintiff.

2. Three points are raised before us in second appeal.

3. The first is that the Judge was in error in admitting the Khatian at all at that stage. The second is that after having decided to admit it, he ought to have given the defendant an opportunity of producing rebutting evidence, and thirdly, that the Khatian has not been construed properly.

4. With regard to the first point it has been frequently held that the provisions of Order XLI, Rule 27, are directory and not mandatory and in the present instance we must remember that the Judge and the Pleaders appearing before him were all familiar with the importance to be attached to the Record of Rights, so that it is not surprising that the Judge omitted to record his reasons.

5. With regard to the second point, the learned Vakil for the appellants urges

that they ought to have had an opportunity of giving evidence, and he tells us that in a case similar to this which recently came before another Bench of this Court, the appeal was remanded in order to give the defendants a chance of meeting the Khatian. In the present instance, however, in answer to our questions as to what evidence the defendants could produce, he has only been able to make, guesses and to suggest that the defendants might prove that the Record of Rights was prepared behind their back or that there was fraud in the preparation of it. It is over a year since the Judge disposed of the appeal and if the defendants really had anything to say against the Record of Rights, their Pleaders would certainly know what their complaints" are. In my opinion these suggestions show that there is no reason why we should east upon the parties the burden of another hearing.

6. The third point raised is that the Khatian has been wrongly construed. The area mentioned in the plaint is one Kani. We are told that in the Khatian the area of the jote for which 8 maunds of paddy is entered as Barga rent is 116 of an acre. That is all to the advantage of the defendants. The decree which has been passed against them will not prove that the area which they hold was one Kani only.

6. I think the appeal fails on each of the grounds taken and it must, therefore, be dismissed with aosts.

Greves, J.

7. I agree.