

(1918) 04 CAL CK 0035
In the Calcutta High Court

Rajlakshmi Dasya

APPELLANT

Vs

Maharaja Bahadur Sir Prodyot Kumar Tagore and Another

RESPONDENT

Date of Decision : 18-04-1918

Acts Referred:

Citation : 46 Ind. Cas. 184

Hon'ble Judges : Shamsul Huda, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the defendant against the decision of the learned District Judge of Rungpur, dated the 26th April 1916, reversing the decision of the Munsif of Gaibanda. The plaintiff brought the suit for arrears of rent. The defendant set up the case that he was entitled to a suspension of the rent because he had been ousted by the plaintiff from a portion of the holding. The case went to trial. The Munsif appointed a Civil Court Amin and there seems to have been a considerable body of evidence before the Court. The Munsif held that the plaintiff had dispossessed the defendant of a portion of the land and that, therefore, there ought to be an abatement of the rent. An appeal was then preferred to the Court of the learned District Judge and the learned District Judge came to this conclusion. First of all, he held that the defendant had, in fact, been dispossessed by the plaintiff of these plots of land. But he said that it had not been shown that these plots formed a portion of the jama of Rs. 21 for the rent of which the plaintiff brought the suit. It is said that that point took the defendant by surprise. This case was definitely put in cross-examination to one of the witnesses. We do not in second appeal look through the record, but the learned Vakil who conducted the appeal on behalf of the defendant read an answer in the cross-examination of one of his own witnesses which showed quite clearly that the point was then being urged before the Munsif, because it was put definitely to the witness as to whether the defendant did not hold another jote under the plaintiff. The legal adviser of the defendant must have known from the line of cross-examination that the plaintiff as part of his case intended to assert that there was another jute held by the defendant under the plaintiff. Otherwise,

the cross-examination was wholly irrelevant. The plaintiff has also given in evidence as a portion of the documentary evidence two books of counterfoil receipts, and two of those receipts show that the predecessor of the defendant held another jote, a jote of Rs. 8, under the plaintiff. I do not know whether those counterfoil receipts were specially referred to in the Court of first instance. The books must have been marked as containing relevant documentary evidence. They could not have been marked simply as books in the possession of the plaintiff but as books in his possession that went to contain relevant matters with reference to the decision of the suit. Mr. Mohendra Nath Roy's argument is that the judgment of the lower Appellate Court must be set aside and the case should be sent back to be re-heard by the lower Appellate Court, on the ground that his client was taken by surprise by the line of argument put forward in the lower Appellate Court on which the learned Judge found against him. I see no reason for setting aside the judgment in a case like this. I think that the defendant must have had notice from the time of the trial in the Court of first instance that such a question was or might be raised, and no application seems to have been made in the first Court, when this question certainly was put to his witness as to whether the defendant held another jote under the plaintiff, that evidence of that sort should be excluded as being irrelevant to the issue. In my opinion, there are no grounds for interfering with the judgment of the learned Judge of the lower Appellate Court. The present appeal, therefore, fails and must be dismissed with costs.

Shamsul Huda, J.

2. I agree.