

(1907) 05 CAL CK 0035

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 913 of 1905

Rustun Gazi

APPELLANT

Vs

Tara Prosanna Chowdhuri and Another

RESPONDENT

Date of Decision : 17-05-1907

Acts Referred:

Citation : (1907) 05 CAL CK 0035

Judgement

Maclean, C.J.—This is a somewhat novel case. It is a suit to recover possession of a small piece of land. Before the suit came on for hearing before the Munsif, a written statement was put in for the Defendant and was received by the Court. When the case came on for trial issues were settled upon the footing of the plaint and the written statement. A pleader appeared for the Defendant; the case was thrashed out; and the Plaintiff's suit was dismissed. Then it came up before the District Judge- and before him an objection was taken that the written statement did not comply with the provisions of sec. 115 of the Code of Civil Procedure, because it had not been signed and verified by the Defendant himself, and the District Judge remanded the case to the Munsif to ascertain whether the written statement had been duly signed and verified. The Munsif went into the matter, and found that it was. Then the matter came again before the District Judge who found that it was not. The District Judge then decreed the whole suit upon the footing that there was no defiance. I think he was wrong. In the first place, it is not obligatory upon a Defendant to put in a written statement, he may do so if he likes. Sec. 146 of the Code of Civil Procedure, which deals with the settlement of issues, contemplates that issues may be settled, whether there was a written statement or not, though it is not obligatory on the Court to frame issues if the Defendant makes no defiance. But the written statement had been actually received by the Court, it was upon the record; and, if the Plaintiff wanted to get rid of it on the ground that it did not conform to the provisions of sec. 115, he ought to have made a substantive application to the Court to have the written statement taken off the file. He did not do that. Prudently he did not raise the question until he reached the Court of Appeal. It was then too late: the more so

as the case had been fought out on the footing of a proper written statement. The case must go back to the District Judge to be tried out on the merits.

2. The costs of this appeal will abide the result.

Holmwood, J.

I agree.