

Khetra Nath Das Vs. Mohananda Das

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Court : Kolkata

Decided On : Dec-01-1921

Reported in : 65Ind.Cas.599

Judge : Suhrawardy and ;Cuming, JJ.

Appellant : Khetra Nath Das

Respondent : Mohananda Das

Judgement :

1. Defendant No. 2 has obtained this Rule against the decree of the Small Cause Court Judge of Munshiganj, Dacca, on the ground that he was not afforded a full opportunity of examining his witnesses. He filed his written statement on the 13th May 1921, when the case was adjourned till the 21st June 1921 for hearing. On that day both the parties applied for time on the ground that their witnesses had not come. The plaintiff said that his witness, Sarat Chandra Acharjya, had not come with the necessary papers and another witness, Rajiv, was seriously ill and could not come, Defendant No. 2 applied for process against his witness, Durga Mohan Chakravartty, on the ground that the summons had not been served on him on the previous occasion.

2. The learned Small Cause Court Judge refused both the applications and proceeded with the hearing of the suit with the result that after examining the plaintiff and two witnesses and the defendant No. 2 he decreed the suit against

that defendant.

3. In the circumstances above set forth, we are of opinion that the learned Judge ought to have allowed time to the parties to produce their evidence before him for the purpose of coming to a just decision in the case. We are not satisfied that the defendant was not prejudiced by the procedure adopted by the learned Judge.

4. We, therefore, make the Rule absolute, set aside the decree passed by the Small Cause Court Judge of Munshiganj, Dacca on the 21st June 1921, and direct that the case be re-heard. No order as to costs.

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