

Sheikh Arabulla and ors. Vs. Sunamani Das and ors.

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Court : Kolkata

Decided On : Feb-22-1921

Reported in : 63Ind.Cas.962

Judge : Buckland and ;Cuming, JJ.

Appellant : Sheikh Arabulla and ors.

Respondent : Sunamani Das and ors.

Judgement :

1. We think that this appeal should be allowed. The lower Appellate Court has held as follows: 'The defendants did not take the land from the plaintiffs. They must be considered as trespassers so far as that portion of the land is concerned.' The Subordinate Judge then goes on to say: 'Kartic Ram had no power or authority to settle lands with defendants which were not his.' Now, the case for the defendants was that they held the lands under Kartic Ram. They have, as a matter of fact, been in possession for a period of twenty years. It is clear, in our opinion, from the words we have quoted, that the Subordinate Judge meant that, at the time when the defendants went into possession, they did so under a settlement entered into with Kartic Ram as de facto proprietor. On looking at the judgment of the first Court in which the following passage occurs: 'From the evidence adduced in this case it is quite clear that the defendants Nos. 2 to 7 have been in possession of the land of this suit as tenants under Kartic Ram and his vendee, defendant No. 1,' we think it is also clear that the Munsif meant to find that the defendants were in

possession as bona fide tenants under Kartic Ram who had given settlement to them. On these facts, the case seems to fall within the judgment in Rajendra Nath Roy v. Nanda Lal Guha 26 Ind. Cas 977 : 19 C.L.J. 595 : 18 C.W.N. 1206. We are not unmindful of the caution expressed in the judgment in Krishna Nath Chakravarti v. Muhammad Wafiz 31 Ind. Cas. 789 : 21 C.W.N. 90 : 23 C.L.J. 563, in which it was also said that 'it is essential that the lessor should be in possession of the disputed property as de facto landlord and that in good faith he should have inducted into the land a cultivator who has accepted the settlement in good faith,' We think that, in substance, the findings in this case amount to this and the principle laid down in these cases applies here. That being so, the learned Subordinate Judge was in error when he went on to say, after saying that Kartic Ram had no authority to settle the lands, that, ex hypothesi, the plaintiffs were entitled to get khas possession. In our judgment, this appeal must be allowed, the judgment and decree of the learned Subordinate Judge must be set aside and the judgment and decree of the Munsif restored with costs in this Court and in the lower Appellate Court.