

**Chinta Hararan Das and ors. Vs. Radha Charan Poddar**

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**SooperKanoon Citation :** [sooperkanoon.com/874367](http://sooperkanoon.com/874367)

**Court :** Kolkata

**Decided On :** Dec-06-1916

**Reported in :** 37Ind.Cas.962

**Judge :** N.R. Chatterjea and ;Newbould, JJ.

**Appellant :** Chinta Hararan Das and ors.

**Respondent :** Radha Charan Poddar

**Judgement :**

1. The plaintiff-respondent brought the suit out of which this appeal arises, for a declaration of his title to and recovery of khas possession of the land in suit. Defendants Nos. 1 and 41 contested the suit. The former claimed the land as appertaining to his estate. The latter supported the former and pleaded that he had taken settlement from him (the defendant No. 1) and had been holding under such settlement for over 12 years. The Court of first instance found the question of title in favour of the plaintiff. There was khas allegation in the plaint that there was an ijara lease of the land in favour of defendant No. 41 up to 1316, but that it was surrendered by him (the defendant No. 41) after service of notice, before the institution of the suit. The Court of first instance held that the relinquishment had not been proved, and passed a decree declaring the plaintiff's title to the land and for possession through defendant No. 41 till 1318. That decree was set aside on appeal and the case was remanded. When the case was decided after remand, the Court of first instance gave a decree to the plaintiff for khas possession as the

lease had admittedly expired at the date of such decree, and that decree has been affirmed on appeal by the lower Appellate Court with some variations.

2. The main question argued before us is whether, having regard to the allegation in the plaint that the term of the ijara was up to 1316, the case should not be remanded to the lower Appellate Court for a finding upon the point whether the ijara lease determined before the institution of the suit. We do not think, however, that we ought to remand the case. The term of the ijara expired in 1316, i.e., before the final decree of the Court of first instance. It, no doubt, expired after the institution of the suit, but in exceptional cases Courts have taken cognizance of events since the institution of a suit on appeal, where the adoption of such a course tends to 'shorten litigation and best subserve the ends of justice.' The decree, therefore, which was passed by the Court of first instance originally (before remand) namely, that the plaintiff do recover possession through the defendant No. 41 up to 1316 should not be passed now, when more than seven years have elapsed from the date of the expiry of the ijara.

3. Then again, the defendant No. 41 from before the institution of the suit repudiated the tenancy of the disputed land as being included within the ijara under the plaintiff, and set up the title of the defendant No. 1 and possession under him. He sided with the defendant No. 1 throughout in this litigation and even in this Court filed the appeal jointly with him.

4. Lastly, it has been urged before us that the defendant No. 41 paid the ijara rent up to 1316 although he held the disputed land under defendant No. 1, and that under these circumstances, there ought not to be any decree for mesne profits in favour of the plaintiff either against defendant No. 41 or against defendant No. 1. The question of mesne profits has been left for determination at a subsequent stage of the suit, and the question whether defendant No. 41 really paid the ijara rent up to 1316 will, therefore, be determined in a subsequent proceeding; and, if that question is found in favour of the defendant, the plaintiff will not be entitled to any mesne profits for the period for which the ijara rent might have been paid by the defendant No. 41. With these observations the appeal is dismissed with costs.

