

Ashraf Ali Vs. Karm Ali and ors.

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Court : Kolkata

Decided On : May-14-1918

Reported in : AIR1919Cal999,46Ind.Cas.927

Judge : Fletcher and ;Syed Shamsul Huda, JJ.

Appellant : Ashraf Ali

Respondent : Karm Ali and ors.

Judgement :

1. This is an appeal by the plaintiff against the decision of the learned Subordinate Judge of Chittagong, dated the 21st July 1916, modifying the decision of the Munsif of Hathazari. The plaintiff brought the suit to recover possession of certain lands in Chittagong which were within a Noabad Mahal. The case as opened here is this: The plaintiff has got a settlement from the Government. His suit has been defeated in the lower Appellate Court on the ground that the defendants are Noabad Talukdars, and, in the view of the learned Judge, a Noabad Talukdar may have a permanent interest and the Judge finds that the defendants have a permanent interest. It was said on behalf of the plaintiff-appellant that, having regard to the decision of this Court in the case of Prosunno Coomar Roy v. Secretary of State 26 C. 792 : 3 C.W.N. 695 : 13 Ind. Dec. (N.S.) 1107, a Noabad Talukdar could not have a permanent interest and, therefore, the view that the learned Judge took of the evidence before him could not possibly be supported on the ground that the law did not warrant such a conclusion. There are other cases

of this Court that show quite clearly that the case reported as Prosunno Coomar Roy v. Secretary of State 26 C. 792 : 3 C.W.N. 695 : 13 Ind. Dec. (N.S.) 1107, did not decide any such general rule, but decided with reference to the particular Noabad Mahal which was under consideration in that case. In two cases of this Court, namely, the case of Jogesh Chandra Roy v. Secretary of State 24 Ind. Cas. 65 : 18 C.W.N. 531 and the case of Maqbul Ahmad v. Hara Gobinda Kalal 8 C.L.J. 470, it has been held that a Noabad Taluk may or may not be a permanently settled one. That being so, the learned Judge of the lower Appellate Court was quite right in this case in coming to the conclusion that the interest that the defendants had in this Taluk was a permanent interest. An attempt was made in reply to raise a totally different case, namely, that this Taluk, although in fact permanent, was liable as to the patit to resumption on the ground that the Talukdar had not made the same fit for cultivation. No such case was made in the lower Courts and it is much too late in reply to raise such a case. If it was intended to raise such a case, proper issues ought to have been settled and evidence adduced to establish the right of resumption and to show that such right was exercised on the part of the Government. The present appeal fails and must be dismissed with costs.