

Sheikh Bechu Vs. Sheikh Solim

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Court : Kolkata

Decided On : Apr-30-1909

Reported in : 2Ind.Cas.417

Judge : Chitty and ;Vincent, JJ.

Appellant : Sheikh Bechu

Respondent : Sheikh Solim

Judgement :

1. The facts of this case appear from the judgment of the learned Subordinate Judge and we need not repeat them. It appears that the defendant is an under-raiyat of the plaintiff. The plaintiff sued the defendant for some arrears bhag paddy in 1904, when the defendant denied the plaintiff's title. The plaintiff withdraw that suit and brought the present suit for khas possession of the land and for mesne profits. The learned Subordinate Judge has decreed the plaintiff's suit and the defendant has appealed to this Court. Under the Transfer of Property Act a denial of the landlord's title would put an end to the tenancy, but that is not the case under the Bengal Tenancy Act and it has been held by this Court in the case of Dhora Kairi v. Ram Jewan Kairi Mahton 20 C. 101 that in such a case the denial of title does not create a forfeiture and that the under-raiyat cannot be evicted from his holding except after notice to quit as prescribed by Section 49, Clause (b), of the Bengal Tenancy Act. That case is on all fours with the present and following it we hold that the decree of the learned Subordinate Judge for Khas possession

and mesna profits cannot stand. The learned Subordinate Judge, however, found that the plaintiff had a raiyati title in this land and as to that he has given no declaration in his decree. We think that the plaintiff is entitled to such declaration. It should be further stated that this decision will be without prejudice to the plaintiff's right in any suit for arrears of rent or for ejecting the defendants as his tenant on account of the rent not being paid. We, accordingly, allow the appeal and modify the decree of the learned Sub-ordinate Judge; there will be a declaration that the plaintiff has raiyati interest in the land in suit. In other respects, the plaintiff's suit will be dismissed. Each party will bear his own costs of this appeal.

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