

Kader Bux Vs. Beni Madhab Sen and ors.

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Court : Kolkata

Decided On : Mar-20-1919

Reported in : AIR1919Cal780,52Ind.Cas.327

Judge : Ernest Fletcher and ;Cuming, JJ.

Appellant : Kader Bux

Respondent : Beni Madhab Sen and ors.

Judgement :

Ernest Fletcher, J.

1. This appeal has been argued at considerable length by the learned Vakil for the appellants, but the points seem to have no foundation at all.

2. The first point urged is that this being a waqf-property--the tenure having been possessed by a waqif--the mutwalli, knowing that the tenure could be annulled, had no power to enter into an agreement with the purchaser at a revenue sale for the grant of a new lease in place of the lease that was liable to be annulled. The learned Vakil for the appellants has given us no decision that the transaction is outside the scope of the powers of a trustee. Apart from authority, I decline to accept the view. In addition to this, the matter was not raised in the lower Courts. It is not a pure question of law whether the lease is binding; and the lower Appellate Court has found that rent was being paid by the mutwalli under the terms of the new lease.

3. The next point was that there was no proof that the plaintiff was an auction purchaser. The plaintiff stated in the plaint that he was and it seems to have been assumed at the trial that he was. Moreover, additional evidence was given before the lower Court of Appeal to show that he was, in fact, the purchaser at a revenue sale.

4. The third Question raised seems to have absolutely no foundation, The appellants managed to persuade the learned Judge of the first Court that certain documents were not admissible in evidence and accordingly they were rejected. The learned Judge of the lower Appellate Court took a different view and admitted the documents in evidence after proof. The case made by the appellants is that the lower Appellate Court had no power to admit additional evidence. It was not additional evidence at all. These documents were tendered in the Court of first instance and were improperly rejected.

5. The appeal fails and is dismissed with costs.

Cuming, J.

6. I agree.

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