

Calcutta High Court

Sonai Chutia vs Sonaram Chutia on 3 May, 1915

Equivalent citations: 34 Ind Cas 692

Bench: L Jenkins, Woodroffe

JUDGMENT

1. This is an appeal from a judgement of Mr. Justice. He has reversed the decree of the lower Appellate Court, which had confirmed the decree of the Munsif. It appears to us that the determination the lower Courts did substantial justice between the parties. And although there may be some difficulty in supporting the reasons by which they arrive at that conclusion, the record furnishes sufficient foundation for a decision in favour of the defendant. It is true that the defendant was a mortgagee and in possession. And, no doubt, in view of that fact we must have regard to what was decided in the case of *Sibendrapada Banerjee v. Secretary of State for India in Council* 34 C. 207 : 5 C.L.J. 390. But we have the additional fact in this case that it is in evidence that on the occasion of the subsequent oral sale there was a delivery of possession, the boundaries were pointed out, formal possession was delivered and a mortgage document was endorsed and handed over to the defendant. Everything, therefore, was done that could be done to deliver possession. Under the circumstances we ought to hold that there was a delivery of possession. It is said that there is no finding of the lower Appellate Court of this delivery of possession. It is because in the view that it took it did not consider it necessary. Now, we in second appeal have powers to consider evidence and to determine any issue that might have been left undetermined by the lower Appellate Court. We consider that the evidence on the record justifies a finding of delivery of possession sufficient for the purpose of Section 54 of the Transfer of Property Act. We, therefore, restore the decree of the lower Appellate Court. Each party will bear his own costs in this Court.