

PETITIONER:
SMT. GITARANI PAUL

Vs.

RESPONDENT:
DIBYENDRA KUNDU ALIAS DIBYENDRA KUMAR KUNDU

DATE OF JUDGMENT 06/12/1990

BENCH:
KULDIP SINGH (J)
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KULDIP SINGH (J)
RAMASWAMY, K.

CITATION:
1991 AIR 395 1990 SCR Supl. (3) 464
1991 SCC (1) 1 JT 1990 (4) 702
1990 SCALE (2) 1198

ACT:

Civil Procedure Code, 1908: Section 100 Concurrent finding of facts--Ignoring of in Second appeal--Issue not raised or argued before Courts below Acceptance of--Whether justified.

West Bengal Estates Acquisition Act, 1953: Under-Raiyats--Sale of their rights--Approval of higher authorities--Whether required.

HEADNOTE:

The appellant purchased the suit land from Bauries, the under Raiyats by way of sale deeds, after the coming into force of the West Bengal Estates Acquisition Act, 1953. It was stated that defendants 1 and 2 accompanied by some Policemen had disturbed the possession of the appellant-plaintiff by destroying the standing crop and planting gamagrass seedlings in the land. Hence the appellant instituted a suit for declaration of title and possession of the suit land. The trial Court decreed the suit in favour of the appellant-plaintiff.

On an appeal filed by the Defendants, the First Appellate Court affirmed the findings of the trial Court.

Aggrieved, Defendant No. 1 filed a Second appeal before the High Court. Reaching a finding that the actual date of dispossession was not specifically mentioned in the plaint and unless the same was pleaded and proved, the suit for possession was not competent, the High Court allowed the appeal and set aside the judgments of the Courts below.

The appellant-plaintiff has preferred the present appeal, by special leave, against the High Court judgment. Allowing the appeal, this Court,

HELD: 1. The High Court fell into error in ignoring the concurrent findings of the Courts below and accepting the appeal on an issue which was neither raised nor argued before the Courts below. The High Court misread the pleadings and the evidence on the record. [467B-D]
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2. In the face of clear pleadings and the evidence on record the High Court was wrong in reaching the conclusion that there was no pleadings and evidence regarding dispossession. Even otherwise in the face of the finding of the

Courts below that the appellant-plaintiff had proved her title it was not necessary for the High Court to go into the question of ascertaining the date of dispossession. [468A-B]

3. There is nothing on record to show that the Baaries could not sell their rights as under-Raiyats without the approval of the higher authorities. Neither there are any pleadings on this point nor any evidence was led before the trial Court. [468C]

JUDGMENT :

JUDIS