

(1897) 06 CAL CK 0002

Calcutta High Court

Case No: Appeal From Appellate Decree No. 1855 of 1895

Raja Shoshee Shekhareswar Roy

APPELLANT

Vs

Giris Chandra Lahiri and others

RESPONDENT

Date of Decision: June 29, 1897

Final Decision: Dismissed

Judgement

1. This is a suit for arrears of rent for the years 1297 to 1300 of a certain putni tenure. The rent is due to the Plaintiff and certain other persons, his co-sharers. The first Plaintiff alone brought this suit making his co-sharers Defendants. The suit was for the whole of the rent. On the date on which the plaint was filed, the co sharers, with one exception, came in and were made Plaintiffs in the suit. The District Judge, without going into the merits of the case, has dismissed the suit on the ground that the Plaintiff has not proved that the co-sharer who did not join as Plaintiff had refused to join. The suit appears to have been brought on the last day on which it could have been brought, so far as regards the rent of 1297.

2. The Judge says that the evidence amounts to this, that one of the Plaintiffs" witnesses asked the agent of the co-sharer Defendant Rani Matongini Debia whether the latter would join as Plaintiff, that the agent said that he would make enquiries and let the witness know, but nothing came of the matter. The Judge says that that does not amount to a refusal to join, and, as we are not judging of the facts, we are unable to say that that is an erroneous conclusion. We must take it, therefore, that the Plaintiffs have not shown that this co-sharer refused to join in the suit. That being so, the question arises whether they could bring this suit for the rent of the whole tenure. All the case." that have been cited go to show that no such suit can be brought, unless it is shown that the co-sharers are unwilling to join in it. No case to the contrary has been cited, and we are not aware of any. It having been found, therefore, as a fact, that the co-sharer Defendant neither refused to join in the suit nor withheld her consent, we are unable to say that the Judge's decision is wrong. The appeal is dismissed with costs.