

(1907) 04 CAL CK 0002

Calcutta High Court

Case No: Misc. App. No. 103 of 1906

Shibh Narain Mookerjee

APPELLANT

Vs

Baikuntha Nath Isar and Others

RESPONDENT

Date of Decision: April 15, 1907

Judgement

Maclean, C.J.

The difficulty I feel in this case is in bringing it within the terms of sec. 622 of the Code of Civil Procedure. In my view the Munsif was wrong in making a decree by which the rent was payable by instalment. This was obviously, so far as I understand the facts, a decree under the Bengal Tenancy Act, and in my opinion, sec. 210 of the CPC does not apply to decrees of that nature but, as the section says, to decrees merely for the payment of money. We all know the distinction between a rent-decree and a decree for payment of money. But the difficulty I feel is that the Munsif had jurisdiction to try the suit and jurisdiction to make a rent-decree, and he has only gone wrong in making the decree in the terms he did. That seems to me to be an error of law and not an error in the exercise of his jurisdiction: and I do not think in this particular case that we can interfere under sec. 622. As at present advised, I do not think the Munsif could make a decree for rent payable by installments.

Fletcher, J.

I Agree.