

## Dina Nath Das and Others Vs Sarat Chandra Chackerbutty and Others

**Court:** Calcutta High Court

**Date of Decision:** April 18, 1916

**Acts Referred:** Bengal Tenancy Act, 1885 â€” Section 153

**Citation:** 34 Ind. Cas. 851

**Hon'ble Judges:** Richardson, J; N.R. Chatterjea, J

**Bench:** Division Bench

### Judgement

1. These appeals arise out of suits for rent. A preliminary objection is taken to the hearing of the appeal, on the ground that a second appeal is

barred u/s 153 of the Bengal Tenancy Act. But the question whether the defendants are entitled to get an abatement of rent or they are bound to

pay the full rent was gone into by the lower Appellate Court, and a decree for the full rent claimed was passed. The decree decided the question of

the amount of rent annually payable by the defendants and the preliminary objection must accordingly be overruled.

2. Turning to the merits of the case it appears that the plaintiffs settled the lands in suit with the defendants. But defendants were obstructed in

getting possession of the lands by the villagers, on the ground that they had a right of pasturage over the lands. One of the defendants thereupon

brought a suit for declaration of title to and for recovery of possession of his share against the villagers, numbering about 200, and the lessors, the

present plaintiffs, were also made parties to that suit. The suit was decreed and he was ordered to be put into khas possession, subject to the right

of pasturage of the nine persons who appeared and claimed such right in that case. It was further provided in that decree that in the case of a

difference between the parties as to the exact quantity of land that was to be set apart for pasturing the cattle of the nine persons, reference should

be made to the Court by application. In execution of that decree the plaintiff in that suit obtained joint possession of his share. Objections were

raised on behalf of the judgment-debtor, on the ground that the decree was incapable of execution. Those objections were over-ruled. It was held,

however, that it was not possible to ascertain in that proceeding (in which the co-sharer landlords were not made parties) the question as to the

extent of land required for pasturage and the said question was accordingly left open to be determined in a subsequent proceeding properly framed

for the purpose.

3. In these suits for rent the Court of first instance held that the plaintiffs were not entitled to get any rent. On appeal, the lower Appellate Court

held that as the defendants had obtained possession in execution and as they did not apply to the Court for determining the area required for

pasturage in accordance with the decree in the previous suit obtained by one of them, the plaintiffs were entitled to the full rent reserved in the

lease. But the plaintiffs having let out the lands at a certain rent and it having been subsequently found that other persons had some right in the land,

we do not think the plaintiffs are entitled to the full rent as stipulated in the lease, and the defendants are entitled to get an abatement in respect of

the land which may be required for the purpose of pasturage by the villagers whose right had been established in the previous suit.

4. Under these circumstances we set aside the decree of the Court below and send the case back to the Court of first instance, with directions that

the defendants do apply to the Court in Suit No. 313 of 1903 for determination of the quantity of land required by the nine persons who are

declared to have a right of pasturage in that suit within a fortnight from the arrival of the record in that Court. On the application being made to the

Court in the said Suit No. 313 of 1903 for fixing the quantity of land so required, the Court will determine the same and the defendants will be

entitled to the deduction of rent proportionate to the quantity of land which may be so determined and the plaintiffs will be entitled to a decree for

rent accordingly in these suits.

5. Costs of these appeals will abide the result.

6. If, however, the defendants do not apply to the Court below in Suit No. 313 of 1903 as stated above, then these appeals will stand dismissed.