

(1878) 06 CAL CK 0003

Calcutta High Court

Case No: None

Kally Coomar Roy and
Others

APPELLANT

Vs

Annoda Churn Roy

RESPONDENT

Date of Decision: June 5, 1878

Citation: (1879) ILR (Cal) 89

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

This suit is brought to recover from the defendant No. 1, who is a ryot, an eight-anna share of the rent of a certain jote, which, as plaintiff's say, formed the joint property of their father; Guru Dass Roy, the defendant No. 3, and Prankisto Roy, the father of defendant No. 2.

2. The plaintiffs' case is that an undivided eight-anna share of this property has been conveyed to them by a deed of gift; and they sue the defendant to enforce payment by him of their half share of the entire rent.

3. They have made defendants Nos. 2 and 3 parties to the suit avowedly in order to obtain as against thorn an adjudication of their title to the eight-anna share of the rent; and they are in point of fact endeavouring to try the question of title as between them and the defendants Nos. 2 and 3 under the guise of a rent suit against the defendant No. 1.

4. It is not suggested that defendant No. 1 was unwilling to pay his rent in its entirety to the persons who were entitled to receive it; but he is harassed with this suit in order that the alleged title of the plaintiffs to their share as against the defendants Nos. 2 and 3 may be ascertained and established.

5. The learned Judge of this Court considers that such a suit will lie, but we are unable to agree with him. If ijmal property is let to a tenant at one entire rent, we

think it clear, upon principle and authority, that the rent is due in its entirety to all the co-sharers, and that all are bound to sue for it; and that no co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties to the suit or not.

6. Of course, if the land demised ceases to be ijmalī, and one portion of the divided area becomes the property of A, whilst another becomes the property of B, it is necessary that an apportionment of the rent should take place, and then in order to obtain such an apportionment, it would be quite proper that either A or B should bring a suit against the tenant for so much of the rent as he considers his proper portion, making B or A, as the case may be, defendant to the suit.

7. An illustration of this will be found in the case of *Sreenath Chunder Chowdhry v. Mohesh Chunder Bandopadhyaya* 1 C.L.R. 453,

8. But here there has been no division of the area of the property. The area is on entire, the rent has always been paid by the tenant in its entirety, and the title of the co-sharers remains ijmalī. We think, therefore, that the decision of the Munsif is right; and that the judgment on special appeal must be reversed, and the plaintiffs' suit dismissed with costs in both the Courts.