

(1869) 01 CAL CK 0004

Calcutta High Court

Case No: Regular Appeal No. 147 of 1868

Srimati Bhabatarini Dasi and  
Others

APPELLANT

Vs

J. Grey

RESPONDENT

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Date of Decision: Jan. 5, 1869

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### Judgement

Loch, J.

This suit has been brought for arrears of rent for 1271, 1272 and 1273 (1864, 1865 and 1866). It appears that the defendant executed a kabuliat in favour of the plaintiffs, agreeing to pay rent at the rate of 8,884 rupees for plaintiff's share of the zamindari Sharshahabad, &c. There was a further stipulation in that kabuliat that the defendant was to measure and enhance the rents of the ryots, and of that enhanced rent he was to pay over half to the zamindar and retain half for himself. He was also bound, at the close of each year, to render an account to the zamindar. The present suit was instituted on the 2nd Baisakh 1275 (May 1868), and the Collector has held that the claim for rent of 1271 is barred by limitation, the suit not having been brought within three years from the close of the Bengal year 1271; and he has further held, that as the suit is not brought for the jumma specified in the kabuliat but for the amount of the enhanced rent realized from the ryots under the provisions of the lease, it is a suit only cognizable by the Civil Court. He has, therefore, dismissed the claim. We think that the Collector has taken an erroneous view of the nature of the claim; he has treated it as if it were similar to other stipulations in the kabuliat, such as damages for trees wantonly destroyed, supply of 1,000 mangoes yearly; and he has considered that all these items can only be disposed of by a regular suit, and that it was never contemplated that they should be brought before the Revenue Court in summary suits, each item requiring judicial enquiry. It is necessary to point out to the Collector the difference in these items; the stipulation for damages on account of the wanton destruction of trees could not be claimed as rent, and could not, therefore, be sued for in the Revenue Court; the supply of 1,000 mangoes yearly is clearly part of the rent paid in kind, the rest in

cash, and the value of them is clearly realizable as part of rent in the Revenue Court. Further, the Collector is wrong in considering suits for rent under Act X of 1859, to be summary suits. They are not summary suits, but they are to all intents and purposes regular suits, only tried by the Collectors and not by the Civil Court; and, therefore, there can be no doubt that every point on which the parties are at issue which comes before the Collector, does involve judicial enquiry.

2. Then with regard to the particular item which is claimed in the present case, we think that it is clearly a part of the rent, and may be sued for as rent. The defendant agreed to pay a certain fixed sum, and knowing that higher rents might be realized from the tenantry, he agreed with the plaintiff that if permitted to enhance the rents, he would, in addition to the sum already entered in his kabuliat, pay to him half of whatever should be realized from the tenants; he was bound to render an account every year to the plaintiff, and on looking at the accounts, if anything were in balance, whether part of the fixed rent as stipulated in the kabuliat or part of the enhanced rent and were not paid up, we see no reason why plaintiff should be debarred from suing for such sum in the Collector's Courts as arrears of rent. The case *Ashootosh Chuckerbutty v. Banee Madhub Mookerjee* (5 W.R., Act X Rul., 34) is very much in point; in that the durputnidar agreed, in addition to his rent, to realize and to pay to the putnidar the arrears of rent then due by the ryots to the putnidar; and it was held by this Court that the putnidar could sue for such rent realized by the durputnidar in the Revenue Court. It has been attempted by the pleader for the respondent to show that half of the enhanced rents, which were to remain in the hands of the defendant, must be considered merely as remuneration for the trouble that he took in measuring the lands and enhancing the rents, but this is a mistaken view; but whatever it may be, it certainly did not, in any way, alter the character of that money which was to be paid to the zamindar. A Full Bench decision, *Raja Nilmani Sing v. Annada Prasad Mookerjee* (1 B.L.R. (F.B.), 93) has been quoted by the respondent to show that a case of the nature before us, is cognizable by the Civil Court; that case is entirely at variance with, and is by no means applicable to, the present case. We think the suit is one for rent, and is triable by the Revenue Court, but as there is no sufficient evidence to dispose of this case, we, therefore, remand the case to the Collector that evidence may be called for and the case disposed of on the merits. With regard to the rent of 1271, we concur with the opinion expressed by the Collector, that the claim for the rent of 1271 is barred by limitation. The costs of this appeal will follow the ultimate result of the case.