
(1869) 07 CAL CK 0022

Calcutta High Court

Case No: Speacial Appeals. Nos. 446 and 447 of 1869

Roso Pyari Chowdhrair

APPELLANT

Vs

Narattam Das
Chowdhry and Another

RESPONDENT

Date of Decision: July 2, 1869

Judgement

E. Jackson, J.

This was a suit for a kabuliat at an enhanced rate of rent. The kabuliat was allowed at an enhanced rate by both the Courts below, and a term of three years was fixed during which the kabuliat was to remain in force. The first ground taken in special appeal is, that this term should not have been fixed; section 76 of Act X of 1859 applying only to suits by ryots for pattas, and not to suits by landholders for kabiatiats. This point seems to have been decided in 1863, in the case of James Hills v. Ishore Ghose Case No. 927 of 1853; September 2nd, 1863 in favour of the contention of the special appellant, and the special respondent's vakeel does not object to the erasure of the term from the kabuliat. We therefore modify the decree of the lower appellate Court to that extent, and we direct that the kabuliat be given without any term. The second point raised in special appeal is, that the plaintiff not having obtained a kabuliat for the exact amount of rent for which he sued, his suit should have been dismissed altogether under the ruling of the Full Bench. As no objection to this effect was taken before the lower appellate Court, we will not allow it on special appeal. We accordingly dismiss both these appeals with the exception of the one modification above alluded to. Each party will pay his own costs of the appeal.