

**(1869) 04 CAL CK 0020**

**Calcutta High Court**

**Case No:** Special Appeal No. 3033 of 1868

Udaya Charan Dhur

APPELLANT

Vs

Kali Tara Dasi and Another

RESPONDENT

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**Date of Decision:** April 26, 1869

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### **Judgement**

Mitter, J.

This was a suit for a kabuliat instituted under the provisions of section 23, Act X of 1859. The lower Appellate Court has found, that the plaintiff has failed to prove that any relationship of landlord and tenant existed between him and the defendant. The plaintiff appeals specially, urging that the only point which the lower Appellate Court ought to have tried was, whether the intervenor had been in the bond fide receipt and enjoyment of the rent up to the date of suit, and that on the failure of the intervenor establishing this point, a decree ought to have been passed in his (plaintiff's) favour, as a matter of course. But it is unnecessary for us to enter into this question. It is quite clear that the plaintiff is not entitled to a kabuliat upon the facts admitted by him in his own plaint. The plaintiff admits that the lands are held by the defendant, under several landholders, between whom no partition has yet been made, and this suit is for a kabuliat for one-third share of the rents payable by the defendant.

2. We are of opinion that such a suit cannot be maintained. When a ryot is holding land covered by a single lease under several landholders, and no partition has been made between those landholders, one only of the coparceners has no right to sue for a kabuliat for his own fractional share. A point very similar to this was discussed in the case of Rani Sarat Sundari Debi v. Watson [2 B.L.R. (A.C.), 159], and it has been distinctly held that "a proprietor of a fractional share of an undivided estate, though receiving a definite portion of the rent from the ryot, is not entitled to maintain against him a suit for a separate kabuliat in respect of such undivided share."

3. It is not necessary for us to go to the same length as the learned Judges did in that case, for there is no proof by the plaintiff that either he or his predecessors had

been collecting rents separately from the defendant. Under such circumstances, the plaintiff's suit must fail, and this appeal dismissed with costs in favour of the intervenor only, the ryot defendant not having appeared.