

(1868) 12 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 2095 of 1868

Muktakeshi Debi Chowdhrair

APPELLANT

Vs

Sajed Sheikh and Another

RESPONDENT

Date of Decision: Dec. 15, 1868

Judgement

L.S. Jackson, J.

This was a suit by the zamindar, against the defendant, who held certain notes under him, praying the Court to fix an enhanced rate of rent, upon the ground that the defendant was holding more land than he paid for, and to order defendant to execute a kabuliat at such rate. The Judge considered that the defendant must be regarded as a trespasser in respect of the excess land, inasmuch as the land was not included in any potta granted to him; and he, the Judge, therefore, thought the suit would not lie, and dismissed it in toto. I think that the Judge was mistaken in considering that the suit fell within the ruling in Rashum Bibi's case (6 W.R., Act X Rul., 57), where it was held that a ryot occupying land not included within the limits of the jote or holding, must be looked upon as a trespasser in respect of such land, and that a suit to enhance would not lie. It is clear that when the land lies within the limits of the jote, and the zamindar sues for enhancement, on that ground, the case clearly falls within the provisions of clause 3, section 17, Act X of 1859.

2. The case must go back to the Judge, in order that he may determine whether the land actually had been held by the defendant, and to assess fair and equitable rates. Then it is contended that as this is a suit for a kabuliat, the suit ought to have been dismissed. This, however, was not purely a suit for a kabuliat, but the Court was asked to order the execution of a kabuliat after determining the rate of rent. We think, therefore, that the Court was at liberty to comply with that portion of the plaint which asked for the ascertainment of a fair and equitable rate, without granting a kabuliat.