

(1868) 08 CAL CK 0011

Calcutta High Court

Case No: Regular Appeals Nos. 148 and 149

Raja Nilmani Sing

APPELLANT

Vs

Annadaprasad Mookerjee

RESPONDENT

Date of Decision: Aug. 8, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

The lease mentioned the amounts of rent to be paid, but it provided that the tenant should, within a certain period, ascertain what were the real assets of the property; that if they were found to be less than the amount of rent specified in the lease, the landlord would deduct the difference, and would refund a proportion of the consideration-money. The assets were found to be less. It appears to us that this suit is not for an abatement of rent, but for a declaration that, according to the terms of the lease, the rent really payable is less than the sum nominally inserted in it. A suit for abatement of rent is a suit for reducing the amount which but for the abatement would be payable as rent. In this case, the amount mentioned in the lease was never, according to the terms of the lease, payable as rent. The amount which was inserted in the lease was subject to a condition that it was not to be the rent in a certain event. The suit is, therefore, not a suit for abatement of rent within the meaning of Section 23 of Act X of 1859.¹ This answers the first question.

2. The second question is, whether, if such a suit can be brought, the Civil Courts have jurisdiction to try it when it is mixed up with a claim for a refund of consideration-money. It appears to us that the Civil Court had the power to try this question when it was mixed up with the other questions in the suit. It has been held in *Ramgopal Mazumdar v. F.J. Sanders* 1. W. R. 138; *Ram Chand v. Chandi Charan Das* 1b., 160; *Roy Udit Narayan Sing v. Ram Saran Roy* IB., 221.; *Makuju Noshya v. Dohur Mahomed* 2 W. R. 52; *Bidhubadan Mooherjee v. Durga Mani Debi* IB., 157; *Bhikari Panda v. Ajodhya Prasad* 3 W.R., 176; *Mugni Roy v. Lala Khuni Lal* 6 W. R. (Act X Rul.), 20; *Sarbeswar Dey v. Fakir Mohamed Sirkar* 7 W.R., 243; *Padma Mani Dasi v. Jhola Paly* IB., 283; *Tara Chand Zurgur v. Loknath Dutt* IB., 414; that a suit to recover the possession of land may be tried by the Civil Court when it is mixed up with a

claim for mesne profits. It would be most inconvenient in the present case if the whole question could not be tried by the Civil Court. It is admitted that the Court has jurisdiction to enforce the refund of that which has been paid in excess; and if the Revenue Courts should refuse to abate the rent, the plaintiff would have again to sue in the Civil Court to have the excess refunded, according to the terms of the lease.

¹[Sec 28:--1. All suits for the delivery of pottahs or kabooliyats or for the determination of the rates of rent at which such pottahs or kabooliyats are to be delivered.

2. All suits for damages on account of the illegal exaction of rent or of any unauthorised The second question is, whether, if such a suit can be brought, the Civil Courts have jurisdiction to try it when it is mixed up with a claim for a refund of consideration-money.

Cognizance of suits tinder this Act.