
(1873) 07 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 1659 of 1872

Sajoo Poramanick

APPELLANT

Vs

Ruttee Sirdar and
Others

RESPONDENT

Date of Decision: July 4, 1873

Final Decision: Dismissed

Judgement

Kemp, J.

The ruling to be found in the case of Sreeputty Roy v. Loharam Roy Reference from the Small Cause Court at Kishnaghur, 15th April 1867 refers to a case of damages, the present case not being one for damages at all but for costs. In that case the defendants had trespassed upon the lands of the plaintiff and erected a bandal thereon for the purpose of catching fish within the limits of the plaintiff's estate. Even in that case, which was one of trespass, the Chief Justice, who delivered the judgment of the Full Bench, says:--"The Court cannot say whether the plaintiff is entitled to contribution or not, all that we can say is that the plaintiff was not necessarily precluded from recovering contribution merely because the damages for which the decree was given, were caused by a wrong, in the legal sense of the word, done to the plaintiff. If the Judge had jurisdiction in the case, we should inform him that he ought to try the case upon the merits and to ascertain whether, having reference to the circumstances under which the trespass was committed, the parts which the defendants respectively took in it, and the benefits, if any, which they respectively derived from it, they ought to contribute any and what portions of the damages recovered against them." The Chief Justice then goes on to say:--"If they were all jointly concerned in committing an act which they knew to be illegal, the plaintiff is not entitled to contribution." In the case now before the Court, the parties were only jointly concerned in the act of opposing an amen in making a measurement, and the decree being a joint one, the presumption is that the defendants in the original decree were jointly liable. The lower Appellate Court has found on the evidence that the defendants in this case joined the plaintiff in opposing the zamindar.

2. We dismiss the appeal but without costs as no one appears for the respondent.