

(1879) 03 CAL CK 0011

Calcutta High Court

Case No: None

Akram Ally and
Another

APPELLANT

Vs

Bollye Satee and
Another

RESPONDENT

Date of Decision: March 17, 1879

Citation: (1879) ILR (Cal) 961

Hon'ble Judges: Mitter, J; Birch, J

Bench: Division Bench

Judgement

Birch, J.

The plaintiffs' case is, that they as mokudums of a 13-anna 6-gunda share of a jalkar have demanded an enhanced rent for their share of a fishery from the defendants after serving a notice calling upon them to pay an extra rent for the fishery; that the defendants refusing to pay any increase of rent continue to fish as before. The plaintiff's, therefore, sue in the terms of the plaint to dispossess the defendants. The defendants' answer is, that they have acquired a right of occupancy in the jalkar, and cannot be deprived of their right.

2. The Munsif points out that no question of right of occupancy can arise in the case, but he says that, as the tenants have received notice to pay a higher rent, and been informed that if they decline the plaintiffs' terms they must cease to fish in the jalkar; there is nothing to prevent the plaintiff's from recovering khas possession. In appeal before the District Judge, the main objection raised was that, as the plaintiffs were only proprietors of a portion of the fishery, they could not sue to dispossess the defendants unless their co-sharers joined them in the suit. The Judge considered that, as this point had not been raised in the Court of first instance, it was too late to entertain it.

3. He was of opinion that there was no reason why the plaintiffs should not be allowed to hold joint possession of their 13-anna 6-gunda share of the fishery with

the defendants as tenants of the 3-anna share. The 3-anna shareholders would not join the plaintiffs in the suit, and they evinced no wish to interfere with the defendant's possession of their share of the fishery. The Judge confirmed the order of the first Court, and gave the plaintiffs a decree for joint possession in the fishery to the extent of 13 annas 6 gundas.

4. It is urged before us that the Judge was bound to try the question whether the plaintiffs as proprietors of a portion of a joint fishery could bring a suit to eject the defendants; and this being a point of law, we are bound to entertain it.

5. We think that a suit, framed as this is, will not lie. The fishery is joint property; the rent payable to the proprietors of the 13-anna share, and to the owner of the 3-anna share, is paid according to arrangement between the shareholders. But unless the whole of the proprietors join in a suit to eject the defendants by terminating the tenancy, the suit will not lie. The provisions of Act VIII of 1869 are not applicable in a case of this description, but the principle upon which it has been held that in cases brought under that Act a co-sharer cannot sue to enhance rent, applies here. The original lease granted by all the proprietors, cannot be varied or terminated at the suit of one.

6. The appeal must, therefore, be allowed, and the suit must be dismissed with costs.