(1912) 07 CAL CK 0036

Calcutta High Court

Case No: None

Sarat Chandra Chowdhury		APPELLANT
	Vs	
Keshab Chandra Chowdhury		RESPONDENT

Date of Decision: July 25, 1912

Citation: 16 Ind. Cas. 422

Hon'ble Judges: Holmwood, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal on behalf of the defendants in a suit for rent. A preliminary objection has been taken to the competency of the appeal on the ground that it is barred u/s 153 of the Bengal Tenancy Act. The claim was for recovery of Rs. 99-14 15 gandas on account of rent, cesses and damages. Prima facie, therefore, the decree of the District Judge, passed on appeal, is final.

2. But it has been argued on behalf of the defendants-appellants that the expression "amount claimed in the suit" in Section 153 of the Bengal Tenancy Act includes costs and interest. In our opinion, there is no foundation for this contention. The plaint, on the face of it, shows the precise amount claimed, as required by Order VII, Rule 2 of the Code of Civil Procedure; that amount is less than Rs. 100 and determines the competency of the appeal. The costs of the suit are not part of the "amount claimed;" if they were allowed to be added to the sum claimed, it would be, as Lord Chelmsford said in Doorga Doss Chowdry v. Rama Nauth Chowdry 8 M.I.A. 262 in the power of every litigant, by swelling the costs, to bring any suit up to the appealable value. Nor can interest pendente lite be included in the "amount claimed," though it may possibly have been included, if the expression had been amount decreed: Gooroo Persad Khoond v. Juggut Chunder 8 M.I.A. 166 : 3 W.R. 14; Moti Chand v. Ganga Prasad 29 I.A. 40 : 4 Bom. L.R. 156 : 6 C.W.N. 362 : 24 A.C 174. In any event, interest or costs cannot be regarded as amount claimed."

3. It has finally been contended that the decree has by implication decided a question relating to the amount of rent annually payable by the tenant. No question,

however, as to the amount of annual rent was raised before the District Judge; nothing, therefore, has been decided. If the grievance of the appellant is that the question ought to have been decided before a decree was made against him, his remedy clearly was not by way of an appeal but by means of an application for revision, This appeal is consequently incompetent and is dismissed with costs.