

(1925) 06 CAL CK 0061**Calcutta High Court****Case No:** None

Hemanta Kumar Roy and Others

APPELLANT

Vs

Meser Bibi

RESPONDENT

Date of Decision: June 9, 1925**Citation:** 95 Ind. Cas. 984**Hon'ble Judges:** Ewart Greaves, J; B. B. Ghose, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of an application for increase of rent for increase of area presented before the Assistant Settlement Officer of Jessore. Both the Courts below rejected the application on the ground that the kabuliylats showed that the rents were fixed for the lands as described within the boundaries. The learned Special Judge observes that the area shown of each plot is a mere description and the rent was not fixed with reference to the area nor is it shown that the tenants have made any encroachment on the khas land of the landlord. The question depends upon the construction of the kabuliylats. It is true that the lands were let out as being bounded as described in the "schedule and the area was described as 68 bighas and 15 1/2 cottas. Ordinarily it must be held that the area was merely given by guess and the lands as described Within the boundaries were let out at the rent arranged and if the landlord failed to prove that the tenant was occupying more lands than he was paying rent for by encroaching upon adjacent lands belonging to the landlord, a right to claim excess of rent for excess of area must fail. In this case, however, under Clause 9 of the kabuliylat, it was stipulated that rent should be payable at certain rates with regard to a certain quality of land which would be found on measurement under a survey, at which the tenant bound himself to be present. It may be inferred from that clause that the lands as described within the boundaries were not let out at the fixed jama mentioned in the kabuliylat. But it was the intention of the parties that the rent should be assessed upon a survey of the lands within the boundaries having regard to the class of land and area of each plot. It does not seem, therefore, the decision of the Court of the Special Judge is correct.

2. The case must, therefore, be sent back to him for a finding as regards the area and rent payable with regard to each class of land, having regard to the rent payable in the locality.
3. The costs of this appeal will abide the result. Hearing-fee, one gold mohur.