

(1918) 01 CAL CK 0045

Calcutta High Court

Case No: None

Jogendra Kumar Ghose and
Others

APPELLANT

Vs

Ananda Chandra Mozumdar and
Others

RESPONDENT

Date of Decision: Jan. 17, 1918

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 14, Order 7 Rule 18

Citation: 44 Ind. Cas. 21

Hon'ble Judges: Richardson, J; Beachcroft, J

Bench: Division Bench

Judgement

1. In S.A. No. 1710 of 1916. This is an appeal by the plaintiff from the judgment and decree of the District Judge of Noakhali, dated the 21st March 1914, confirming the decree of the Munsif of Lakhipur, dated the 27th April 1913. The suit is a suit for rent at an enhanced rate on the footing that the tenants, the defendants, are in possession of an area in excess of that for which rent had previously been paid. The suit was instituted on the 15th April 1912. The first date for hearing was the 3rd July 1912. But thereafter there were a number of adjournments and on the 10th August 1912 the parties were directed to file their documents within seven days and the kabuliyat to which this appeal relates was in fact filed by the plaintiff on the 9th September 1912. The order then made was that the documents should be kept on the record. Further proceedings followed, including a local enquiry by an Amin. The case did not come on for hearing till the 21st April 1913. Then in the course of the examination of one of the witnesses the kabuliyat to which I have referred was tendered in evidence on behalf of the plaintiffs. The learned Munsif refused to admit it on the ground that it had been filed out of time. He decreed the suit for rent at the previous rate but dismissed it in so far as it related to the claim for increase of rent. The learned District Judge agreed with the Munsif that the kabuliyat was filed out of

time and dismissed the plaintiff's appeal preferred in his Court. It appears that the Courts below refused to accept this kabuliyat in evidence on the ground that being a document on which the suit was in part based it was not filed along with the plaint under Rule 14 of Order VII. In such cases Rule 18 of the same Order gives these Courts a discretion to accept a document not filed with the plaint. The rule says that a document which ought to have been produced in Court by the plaintiff when the plaint was presented and was not so produced "shall not without the leave of the Court be received in evidence at the hearing of the suit." Now the cases of *Devidas Jagjivan v. Pirjada Begam* 8 B. 377 : 4 Ind. Dec. (N.S.) 625 and *Mewa Lal Sahu v. Kumerji Jha* 2 Ind. Cas. 946 : 13 C.W.N. 797 : 10 C.L.J. 33 illustrate the principle applicable to the exercise of the discretion thus conferred. The kabuliyat in question appears to have been exhibited in a previous suit and no doubt is suggested that the document was in existence at the date of the institution of the present suit. Having regard, moreover, to the proceedings which had taken place and the expense which had been incurred in connection with the local enquiry by the amin, we find ourselves unable to say that the rejection of this document by the Courts below was a proper or judicial exercise of, the discretion which Rule 18 confers.

2. The result is that the decrees of both the lower Courts must be set aside and the suit remitted to the first Court in order that it may be re-tried on the evidence on the record and such other evidence as the parties may produce. The costs of this appeal will abide the result.

3. This judgment will govern the analogous appeal (Second Appeal No. 3818 of 1914.)