

(1918) 04 CAL CK 0041**Calcutta High Court****Case No:** None

Raja Kishore Lal Goswami

APPELLANT

Vs

Tarapada Bhattacharjee

RESPONDENT

Date of Decision: April 24, 1918**Citation:** 45 Ind. Cas. 875**Hon'ble Judges:** Syed Shamsul Huda, J; Fletcher, J**Bench:** Division Bench**Judgement**

Fletcher, J.

3. This is an appeal by the plaintiff against the decision of the learned Subordinate Judge of Hughly, dated the 4th April 1916, modifying the decision of the Munsif at Serampore. The defendant took a lease of certain property to which the provisions of the Transfer of Property Act apply for the purpose of carrying on a shop--for the purpose of his aratdari business amongst other things. The lease provided for the payment of a certain amount of rent. It also provides that the lessee should pay dan or or over the stipulated rent as part of the rent in respect of goods that should be sold in his arat or on boat or shop or road as aratdar on certain terms. Dr. Kanjilal at the conclusion of his argument was driven to admit that the judgment of the lower Appellate Court, in so far as it refused to decree the commission in respect of goods sold in the shop as aratdar, oonld not be supported. That is obvious. The only question is with reference to the goods sold on boat or road. Dr. Kanjilal's view is that it would be extremely hard that the plaintiff, who is apparently a Pleader, should be permitted to overreach the ignorant aratdar by having stipulated that whenever he should sell on any road in any country he should be liable to pay a commission to the plaintiff. That is not what the lease means, you must put a reasonable construction on the lease. What the plaintiff meant to provide against is this: Perhaps he knew the ways of the aratdars. He meant to provide that the aratdar should not be entitled to anchor a boat in the stream opposite or close to the shop and by taking the goods from the shop to the boat sell them there and say

that that is not a sale within the meaning of the lease. Similarly, he should not be entitled to take the goods out of the shop on the road and instead of selling them in the arat sell them on the road and say that he is not liable to pay commission in respect of the goods sold on the road adjoining the shop. Such cases were intended to be covered by the lease. In respect of the goods so sold, there was nothing to prevent the lessee to stipulate that he should be liable to pay a commission. Nobody can ever likely suggest that this aratdar, when he is in his boat far away from his place of business and sells a maund of" potatoes there, he is liable to pay to his landlord at Serampore a commission of one rupee per one hundred maunds in respect of goods sold at that distance. The lease has got a perfectly clear and reasonable meaning. The case must be remitted to the Court of first instance to find out what amount of additional rent by way of commission on things sold by the defendant as aratdar in the shop or on boat or on road, as I have already mentioned, is payable to the plaintiff. Costs of this appeal will be paid by the respondent.

4. Shamsul Huda, J.--I agree.