

(1917) 08 CAL CK 0054

Calcutta High Court

Case No: None

Amzad Ali Sikdar and Others

APPELLANT

Vs

Naimuddin and Others

RESPONDENT

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**Date of Decision:** Aug. 13, 1917**Citation:** 42 Ind. Cas. 583**Hon'ble Judges:** Tennon, J; Syed Shamsul Huda, J**Bench:** Division Bench

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### Judgement

1. This appeal arises out of a suit brought by the plaintiffs-appellants in order to recover rent at the rate of 200 aris of paddy a year for two years, 1273 and 1274 of the Maghi era.

2. The only question before us is, what is the amount of rent annually payable. It appears that originally there was a kabuliyat between the parties. But that kabuliyat for some reason or other which is not explained is not before us. Though the reason has not been explained, it would appear that neither party is anxious that the Court should examine the kabuliyat. In a previous suit which was brought also for two years of rent and was decided on the 24th August 1911, this question, what is the amount of rent annually payable, was distinctly put in issue and was finally decided between the parties. The parties and the holding being the same, on the authorities in this Court of which it is necessary to cite only two namely, Prabhu Narain Singh v. Sundar Pandey 16 Ind. Cas. 447: 16 C. L. J. 41, and Kali Kumar Ghosh v. Bidhu Bhushan Bonerji 10 Ind. Cas. 382: 16 C. L. J. 89, it cannot now be disputed that when this question what is the amount of rent annually payable is put in issue and finally decided between the parties, that decision is res judicata in subsequent suits. That being so, even though the kabuliyat is not before us, we must hold as was held in the suit decided on the 24th August 1911, that the annual rent payable in respect of this holding to the landlord is 200 arts of paddy and in default of the delivery thereof its current market value.

3. Neither of the Courts below in the view they took of the case found it necessary to determine what the current market price of 100 or 200 arts of paddy was, and it would have been necessary, therefore, to have remanded this case in order to arrive at a decision on that point. But at our suggestion and to avoid further litigation the learned Pleaders appearing on behalf of the appellants and the respondents agree that the rent in the present case will be now decreed for the sum of one hundred and sixty rupees, and as to costs and interest the order will be that should this sum of Rs. 160 be paid into the Court within one month from the date of the receipt of the record in the Court of first instance there will be no order as to costs and the sum decreed will carry no interest. If such payment be not so made, the plaintiffs will have proportionate costs in all Courts and in that event also the sum decreed and the costs will carry interest at the rate of six per cent, per annum.