

(1912) 01 CAL CK 0038

Calcutta High Court

Case No: None

Atul Chandra Dutt

APPELLANT

Vs

Eson Ali

RESPONDENT

Date of Decision: Jan. 4, 1912**Citation:** 13 Ind. Cas. 423**Hon'ble Judges:** D. Chatterjee, J; Caspersz, J**Bench:** Division Bench

Judgement

1. The lower Courts have differed as to the construction of the kabuliat on the basis of which the plaintiff-appellant brought his suit to recover rent. In second appeal it is urged that the construction adopted by the first Court was correct.

2. The kabuliat provides: "That I shall annually pay Rs. 30 and annas 10 in cash and 50 aris of paddy as rent, in instalments as mentioned below and receive dakhilas therefor. If I do not pay the aforesaid paddy rent each year by the months of pans then I shall pay the price thereof Rs. 19-40 with the aforesaid rent. If I do not pay the aforesaid rent then I shall not raise any objection to your realising the arrear rent along with damages and interest by means of any law existing at present or that may be passed in future.

3. Reliance is placed on the case of Baneswar Mukerjee v. Umesh Chandra Chakraverty 37 C. 626 : 7 Ind Cas. 875 which was explained in Afar Morole v. Surja Komar Ghoso 12 C.L.J. 649 : 15 C.W.N. 240 : 7 Ind. Cas. 842. We have to ascertain the meaning of the kabuliat, and the intention of the parties is to be gathered from the plain sense of the language used by them in the lease.

4. The question is, whether the words "the price thereof Rs. 19-4-0" mean that the parties substituted for all time, in the event of the paddy not being delivered, that money equivalent of the 50 aris, or whether the plaintiff can recover the actual market-value of the paddy as awarded by "the Munsif. In the absence of any finding or evidence that the sum of Rs. 19-4-0 represented a value adopted for registration

and stamp duty, or that it was merely intended to represent the then value of the paddy, we are of opinion that the plaintiff cannot get more than what was fixed in the kabuliat. The language of the lease now under consideration resembles the wording of the instrument in the case of *Afar Morole v. Surja Komar Ghose* (2).

5. The view accepted by the Subordinate Judge is correct. The appeal is dismissed with costs.