

**(1922) 02 CAL CK 0065****Calcutta High Court****Case No:** S.A. No. 1635 of 1919

Rajendra Nath Roy

APPELLANT

Vs

Sheikh Abdul and others

RESPONDENT

**Date of Decision:** Feb. 22, 1922**Final Decision:** Dismissed**Judgement**

1. The plaintiff brought a suit for rent against the principal defendants basing his claim on a registered kabuliyat. He was given a decree by the First Court. On appeal that decree was reversed. A second appeal has been preferred to this Court and also a Rule has been granted en the opposite party to show cause why the decree of the lower appellate Court should not be set aside. On the objection taken that section 153 of the Bengal Tenancy Act bars an appeal the appeal has not been pressed and the Rule has been argued.

2. Both the Courts have found that the execution of the kabuliyat on which the plaintiff based his claim has been proved. In the lower appellate Court the defendant-appellant's Pleader was not allowed to argue undue influence or coercion as no such plea had been taken in the written statement. The First Court found that there had been payment of rent in accordance with the terms of the kabuliyat. The lower appellate Court came to the opposite conclusion on this question of fact. Nevertheless, the lower appellate Court held that the relationship of landlord and tenant had been proved, but he refused the plaintiff a decree on the finding that the kabuliyat alone was insufficient to prove the amount of yearly rent payable by the defendants to the landlord in view of the entry in the Record of Rights showing that no rent had been paid. The reasons given by the learned Additional District Judge for holding that the kabuliyat was insufficient to prove the yearly rent payable do not appear to us convincing. But we are unable to hold that, in coming to this erroneous finding the learned Judge exercised a jurisdiction not vested in him by law or failed to exercise a jurisdiction which is vested in him by law, or acted in the exercise of his jurisdiction illegally or with material irregularity so as

to make section 115, Civil Procedure Code, applicable to this case.

3. On behalf of the appellant before us it is contended that on the findings arrived at by the lower appellate Court he was bound to grant him a decree, and not having done so he failed to exercise his jurisdiction. We are unable to accept this contention. On the finding that the annual rental had not been proved the suit was bound to fail and though we may think it was a wrong finding, it was not such an error in the exercise of jurisdiction as to justify our interference. Several cases as to the powers of this Court when sitting in revision have been cited before us, but we think it sufficient to refer to the case of *Shew Prosad v. Ram Chunder* (1914) 41 Cal. 323: 23 I.C. 977, where the point has been discussed at some length. That decision supports our view that we should not interfere in revision on the ground that there has been a serious error in law in coming to a finding in a matter in which the Court had jurisdiction.

4. The result is that the appeal is dismissed as being incompetent and the Rule is discharged. The appellant will pay the respondents' costs in the appeal. We make no order as to costs in the Rule.