

(1868) 07 CAL CK 0024

Calcutta High Court

Case No: Special Appeal No. 1787 of 1867

Shib Kumar Joti

APPELLANT

Vs

Kali Prasad Sen

RESPONDENT

Date of Decision: July 25, 1868

Final Decision: Dismissed

Judgement

Loch, J.

Having come to the conclusion that the Upanchowki jumma covered the whole of the two villages, we do not understand upon what ground the Judge gave a decree for wasilat for six years, for the Upanchowki once being established, plaintiff cannot get a decree for wasilat, but can only claim his share in the Upanchowki jumma which cannot, under any circumstances, be called wasilat or mesne profits; so long as the validity or otherwise of the Upanchowki jumma was not determined, the claim for mesne profits was apparently proper, but no sooner had it been established that the Upanchowki jumma covered the whole of the two villages than the case was changed; the plaintiff becomes entitled to recover only her share of that jumma. With regard to that rent, she cannot recover in the Civil Court; and we, therefore, think that the Judge is wrong in giving a decree for mesne profits. We, therefore, reverse the latter part of the judgment of the Lower Appellate Court, and dismiss plaintiff's appeal with costs, and give a cross decree to the defendants.