

**(1869) 01 CAL CK 0016**

**Calcutta High Court**

**Case No:** Special Appeal No. 1393 of 1868

Pukhraj Sing and Others

APPELLANT

Vs

Lachmi Narayan Puri

RESPONDENT

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**Date of Decision:** Jan. 6, 1869

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### **Judgement**

Kemp, J.

This was a suit for rent. The plaintiff, as mokurruridar, sued the ticcadar for rent. The special appellant, who alleges that he has purchased the proprietary rights in the estate, intervened u/s 77 of Act X of 1859. The first Court--although this does not appear in its decision, but by order on a petition--refused to make the special appellant a party to the suit. On appeal, the Judge held, that no appeal would lie, and that the special appellant had no good claim to be allowed to appear as intervenor before the lower Court. The Judge further observes that the petition presented to the Deputy Collector by the intervenor does not contain any allegation of receipt of rent, nor does it appear from that petition that the intervenor has ever received any rent. We think that both. Courts were wrong in not making the intervenor a party to the suit. The application to be allowed to be made a party was distinctly made u/s 77 of Act X of 1859. Now, there is no other ground upon which a party can claim to be made a party to a suit u/s 77, except one, viz., that he has in good faith received and enjoyed rent up to the time of the commencement of the suit. Therefore, when a party applies under that section, quoting that section, it must be inferred that his plea is that he has been in receipt and enjoyment of the rent before and up to the commencement of the suit.

2. With reference to the petition presented by the intervenor, such portions as the pleader for the respondent wished to have read in support of the Judge's judgment, have been read. We do not find that the intervenor admitted in that petition that he had not been in receipt of the rent. What he stated was, that during the term of the ticca, he was entitled to the malguzari, or the rent, and that after the expiration of the term of the ticca he was entitled to khas possession. The ticcadar, who has been made a respondent, also objects to the intervenor being made a party to the suit,

although the pleader for the respondent, the ticcadar, admits that his client was in doubt as to which party the rent was payable, viz., to the plaintiff or to the intervenor. We think that this is a case in which the intervenor ought to have been made a party u/s 77; and that, simply because the words "that he claimed to receive and enjoy the rent" were omitted in the petition, although the section is distinctly quoted and relied upon, the lower Court ought not to have rejected the petition of the intervenor.

3. We, therefore, remand the case with directions to the Court of first instance to make the intervenor a party u/s 77 of Act X of 1859, and to re-try the case. The intervenor will be permitted to put in evidence in support of his claim. Costs to follow the result.