
(1869) 04 CAL CK 0025

Calcutta High Court

Case No: Special Appeal No. 2885 of 1868

Kamala Kant Ghose
and Others

APPELLANT

Vs

Kalu Mahomed Mandal
and Another

RESPONDENT

Date of Decision: April 26, 1869

Judgement

Norman, J.

The defendants took a village in izara from the plaintiff for ten years. Before the expiration of their lease, the defendants sub-let the property, and at the same time entered into an agreement with the plaintiff to the following effect: "We have been getting your parobi (festival cess) paid from the village at Rs. 175. The dur-izardar has nothing to do with the said parobi. We shall pay you the same, year after year." It was found by both the lower Courts, and is now not denied, that this parobi is an arbitrary and indefinite cess on the ryots, such as is described in section 54 of Regulation VIII of 1793. The exaction of such a cess would have been illegal u/s 3, Regulation V of 1812, and is now prohibited by section 10, Act X of 1859. A contract providing for the collection and payment over to the zamindar of the proceeds of such a cess, appears to us to fall within the rule stated by Chief Justice Holt in *Bartlett v. Vinor Carthew*, 252: "Every contract made for or about any matter or thing which is prohibited and made unlawful by statute, is a void contract." See also *Domats* Civil Law, Book I, Tit. 18, section 4, p. 234, Ed. 1737. We think the object of the contract was to provide for the collection and payment of an illegal cess; that the contract was, therefore, illegal; and that the suit was properly dismissed on that ground by the Judge.

2. We affirm the decision of the lower appellate Court without costs, no one appearing for the respondent.