

(1868) 08 CAL CK 0019

Calcutta High Court

Case No: Special Appeal No. 870 of 1868

Raja Nilmani Sing

APPELLANT

Vs

Madhab Sing

RESPONDENT

Date of Decision: Aug. 14, 1868

Final Decision: Dismissed

Judgement

L.S. Jackson, J.

This is a suit against a jaghirdar to recover arrears of rent, accruing in the time of the defendant's predecessor in the jaghir. The Lower Appellate Court, on the authority of Nilmani Sing v. Government (Mar., 308) has declared that the defendant is liable for no more than one year's arrears, and the plaintiff appeals specially, seeking to show that the defendant, present jaghirdar, is liable for the whole arrears of three years. It appears to us that the case cited is not precisely in point; but there is a case which has been referred to in the argument, Binod Ram Sen v. The Deputy Commissioner of the Sonthal Pergunnahs, (7 W.R., 178,) which seems to have an important bearing on the question; that, it is true, was a case connected with the Ghatwali tenure of Beerbhoom, and decided with reference to the provisions of Regulation XXIX of 1814; but we think that the considerations which influenced the Court's decision in that case are exactly applicable to the present case. The tenure on which the arrears accrued was a service tenure, and the rent payable by the holder, is, we may assume, so calculated as to remunerate the holder for service which he is to perform, and also to provide for his maintenance and necessary expenses. If the landlord neglected to realize the rent from the former incumbent year by year, and should seek to recover the arrears of several years at once from the new jaghirdar, he will necessarily be deprived of the funds which will enable him to perform the service, and to support himself as originally contemplated. It appears to us, therefore, that the suit against the jaghirdar, on account of arrears, unpaid by the predecessor, ought to fail. Plaintiff, it should be observed, has not sued the defendant, as the legal representative of the late jaghirdar, so as to make him liable to satisfy the arrears out of any assets other than the tenure which may have come

to the defendant, but sues him simply as jaghirdar. The special appeal must be dismissed with costs.