

(1869) 02 CAL CK 0026

Calcutta High Court

Case No: Special Appeal No. 1656 of 1868

Panchu Mandal and Another

APPELLANT

Vs

Kalam Sheikh and Others

RESPONDENT

Date of Decision: Feb. 16, 1869

Judgement

Mitter, J.

This was a suit for a kabuliat at an enhanced rate. The plaintiff in this case held a potta from the zemindar, alleged to have been granted to him in Aswin 1269. The defendant claimed under a potta granted to him by the same zemindar in 1257. The Deputy Collector dismissed the plaintiffs' suit, holding that the plaintiff failed to give any evidence that the defendant was his tenant. On appeal, the Judge reversed the decree of the Deputy Collector, upon the ground that, inasmuch as the plaintiff had obtained a lease of all the lands appertaining to the modafut of Jaga Mohan Sircar, and inasmuch as the lands in dispute were included in that modafut, the plaintiff was entitled to obtain a kabuliat from the defendant. We are of opinion that this decree is not correct. On referring to the pottas, propounded by both the parties to this suit, we find that the defendant was formerly an under-tenant of Jaga Mohan Sircar; and that on the desertion of the latter, the defendant applied to the zemindar for a settlement of the said modafut, and accordingly obtained a lease of part of the land appertaining thereto. Under such circumstances the lease, subsequently granted to the plaintiff of the whole of the modafut, cannot constitute the plaintiff the landlord of the defendant. For it is clear that, with regard to the land in dispute, the plaintiff and the defendant stand precisely in the same relation towards the zemindar; and as the plaintiff has not obtained any assignment from the zemindars of the zemindar's right to collect or to enhance the rent reserved in the lease of the defendant, he is not in a position to treat the defendant as his tenant. Nor can the circumstance of the zemindar refusing to accept rent from the defendant, create a right on the part of the plaintiff to sue the defendant for a kabuliat.

2. Under such circumstances it appears to us that the mere fact of the zemindar granting to the plaintiff a lease of the whole of the lands appertaining to the

modafut of Jaga Mohan Sircar, cannot create the relation of landlord and tenant between the plaintiff and the defendant, so as to entitle the former to institute a suit for a kabuliat at an enhanced rate. We, therefore, reverse the judgment of the lower Appellate Court, and decree this appeal with costs in this Court and in the lower Appellate Court. The decree of the first Court is affirmed.