

(1869) 03 CAL CK 0035

Calcutta High Court

Case No: Special Appeal No. 2203 of 1868

Kali Krishna Roy Chowdhry

APPELLANT

Vs

Kali Mohan Chatterjee

RESPONDENT

Date of Decision: March 1, 1869

Judgement

L.S. Jackson, J.

I think the decision of the Court below is clearly wrong. The defendant held a piece of land from the plaintiff in the midst of lands used for building purposes, in fact, in the centre of a town. On that land the defendant's house was built, and the plaintiffs sued to enhance the rent. Judgment having gone against the defendant in the Court of first instance, he appealed to the Judge, on the ground that the provisions of Act X would not apply to such a case. We find no trace in the judgment of the lower Appellate Court of any consideration being given to this ground of appeal; but whether it was urged in argument or no, it was one which manifestly arose out of the facts alleged and admitted, and which ought not to have been overlooked by the lower Appellate Court. It seems quite clear that Act X will not apply to such a case; and whatever may be the effect of our decision on the relations between the parties in respect of those lands, I think we are obliged to say that the suit for enhancement ought to have been dismissed. The decision of the Court below will, therefore, be reversed, and this special appeal allowed with costs.

Markby, J.

I am of the same opinion. I think this is an objection which, whether it was pressed or not in the Court below, it is impossible to avoid, because, as it appears to me, the whole proceedings have been misconceived. It is impossible for us to say whether the rules of enhancement laid down in Act X have been rightly applied, when those rules have no application to the question in this suit. I should always be very unwilling to allow any new ground to be taken in special appeal, but this is one which, it seems to me, we are ourselves bound to notice.