

(1867) 03 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 2779 of 1866

Kirteebash Mayetee

APPELLANT

Vs

Ramdhun Khorla

RESPONDENT

Date of Decision: March 19, 1867

Judgement

Sir Barnes Peacock, Kt., CJ.

1. The Judge in this case says that the dakhilas produced by the defendant are not anywhere denied by the plaintiff, and consequently, under the ruling in *Kazee Khoda Newaz v. Nubokissore Roy* 5 W.R. Act X Rul., 53, they must be accepted as true. He does not state whether there was or was not any evidence to prove that they were genuine, but he accepted them as true, merely because the plaintiff had not denied them. The question came before the 1st Division Bench, who then thought that the rulings on which the Judge had relied in support of his decision could not be upheld, but as there are conflicting decisions upon the point, the case was referred to a Full Bench. I retain the opinion which I expressed on referring the case. In the second of the two cases, *Kazee Khoda Newaz v. Nubokissore Roy* 5 W.R. Act X Rul., 53 cited in the referring order, Bayley and Pundit, JJ., say:-- "Further, it has been decided here that when the payment of rent is not a matter directly in dispute, and dakhilas are produced by the ryot to show that he is entitled to the presumption of s. 4, and these receipts are not denied by the landlord, the tenant is not required to prove them, but, by the non-denial, admission is legally presumed."

2. We think that the decision cannot be upheld to the extent that admission is legally to be presumed from non-denial. If a fact, or a document in support of a fact, is to be proved, it must be proved by legal evidence whether the fact is directly in dispute or not. If a fact is admitted, it need not be proved; but if it has to be proved at all, it must be proved by proper evidence, whatever may be the purpose for which it is to be proved. The decision refers to a former case, *Rajessuree Dabee v. Shibnath Chatterjee* 4 W.R., Act X Rul., 42 decided by Bayley and E. Jackson, JJ., in which the Judges say:-- "There is no doubt that dakhilas should, as a general rule, be attested

or proved by some oral evidence, in the same manner as all other documentary evidence. But there is a special difficulty for a tenant to prove dakhilas which are drawn up by his zamindar's agents and signed by them, more particularly of long past days. The tenant cannot be expected in every case to summon all the gomastahs of his zamindar for the past twenty or thirty years to attest his dakhilas. He should be required in his examination to attest the dakhilas himself as far as he can. All dakhilas which have been given to him personally he can prove as well as any other witness. The tenant having so far deposed to their genuineness, it will remain for the zamindar, or his agent who may depose on his behalf, to deny their genuineness. He also should be examined regarding them. A mere general statement that they are false should not be listened to. If he states that they are false documents, he should be required to detail his reasons for so stating, and if they appear to have any foundation, an issue should be laid down, and both parties required to produce further evidence on the point."

3. To the extent of saying that an issue should be laid down as to whether the documents are genuine or not, when they are produced in the course of a trial as evidence to prove an issue which has already been laid down, or any important fact in the cause, I think that the Judges were not right; but I think they were right to this extent, that if a tenant produces dakhilas, and swears that they are genuine documents which were delivered to him by the landowner or his gomastah, or gives other prima facie evidence to show they are genuine, whether the purpose be of proving that rent has been paid in a suit for arrears, or to prove that rent has been paid at a fixed rate for a certain number of years for the purpose of barring a landlord's claim to enhance, such dakhilas are strong evidence, if the landlord, or his agent, do not come forward and deny them. The Judges are right in saying that it cannot be expected that a ryot should in every case summon all the agents of his landlord who gave him the receipts but the ruling in the last case, that if the landlord does not deny them they must be taken to be true, without any evidence on the part of the ryot, cannot be upheld. In many cases the landlord is not present at the trial, and does not even know what documents are intended to be produced. How, and in what stage of the cause, is he to deny them? If a ryot produces dakhilas, and swears that he received them from the landowner, or his agent, or gives other prima facie evidence of their genuineness, and the landlord, or his agent, does not come forward and deny them, or give evidence to show that they are not genuine, they may be taken as prima facie evidence against him, if the evidence of the ryot is believed. In this case, as the Judge has not entered into the question whether there was any evidence in support of the dakhilas, the case must be remanded to him to enquire whether the dakhilas are genuine or not, and to determine the case after that question has been determined upon proper evidence.