

(1869) 02 CAL CK 0032

Calcutta High Court

Case No: Special Appeal No. 1702 of 1868

Sonatan Roy and
Another

APPELLANT

Vs

Ananda Kumar
Mookerjee and Others

RESPONDENT

Date of Decision: Feb. 4, 1869

Judgement

L.S. Jackson, J.

This was a suit by Sonatan Roy and others, who occupied some parcels of land, to set aside a judgment of the Deputy Collector, by which they were ordered to execute a kabuliat in favour of the defendant, Ananda Kumar Mookerjee, and to have it declared that the lands in question belonged to an estate called Kistobati, and not to an estate called Ramchandrapur. This suit appears to have been entertained by the Courts below, and to have been decided by the lower Appellate Court, on the merits, in favour of the defendant. The plaintiff now appeals specially to us upon a ground which it seems to me it is unnecessary to go into, because, I am of opinion, that this suit could not be maintained in the Civil Court. The decision of the Deputy Collector, which it is sought to set aside, was a decision in a suit brought by a zemindar against his ryot to obtain a kabuliat, that is a suit of which the exclusive cognizance is reserved by clause 1, section 23, Act X of 1859 to the Court of the Collector, and except by way of appeal as provided by that Act is declared to be not cognizable by any other Court, by any other officer, or in any other manner. That appears to me effectually to bar the cognizance of the Civil Court for the purpose of setting aside the decision.

2. I can easily conceive a case in which a neighbouring zemindar might find himself aggrieved by a decision of the Collector adjudging that a particular ryot is to execute a kabuliat in respect of lands held by him in favour of the zemindar of another estate, and in that case probably an action would be maintainable by the zemindar so aggrieved, in order to declare his title to the lands in question. That is not the present suit. I think this suit ought, therefore, to have been dismissed, and that, consequently, the special appeal must fail on this ground. The appeal, therefore, is dismissed with costs.

Markby, J.

I also think that this suit is not maintainable.