

(1870) 01 CAL CK 0018

Calcutta High Court

Case No: Special Appeal No. 2433 of 1869

Gobind Chandra Roy
and Another

APPELLANT

Vs

Ganga Gobind Sen

RESPONDENT

Date of Decision: Jan. 28, 1870

Judgement

Phear, J.

In this case the defendant has executed a kabuliat to four persons jointly. Two of them sue him in the Collector's Court for arrears of rent, making their co-sharers, or the representatives of those co-sharers, defendants jointly with the tenant. We think that a suit of this kind cannot be brought in the Collector's Court, because any decision passed in it would purport to determine a matter between co-sharers of property, and it is clear that the Collector has no power to give a decree of this kind. If all the parties who are jointly entitled to rent due under a kabuliat cannot agree to sue together in the Collector's Court, and one or more of them has such a right to a share as entitles him to recover it by suit, it must be by suit in the Civil Court, in which the decree will bind his co-sharers as well as the tenant, and give the tenant due protection against any claim which might be made by the other sharers of the estate.

2. The decree of the lower Courts must be reversed, and the plaintiff's suit must be dismissed. The appellant will get his costs in all the Courts.