
(1870) 03 CAL CK 0026

Calcutta High Court

Case No: Special Appeal No. 2525 of 1869

Shib Ram Ghose,
Gomasta on behalf of
Ram Chowdry Roy and
Another

APPELLANT

Vs

Pran Piria and Another

RESPONDENT

Date of Decision: March 9, 1870

Judgement

Mitter, J.

This was a suit for a kabuliat at an enhanced rate. The lower appellate Court has dismissed the suit on two grounds, namely, first, that the plaintiff cannot maintain an action for a kabuliat for a fractional share of the lands; and, secondly, that the plaintiff has failed to make out that portion of the lands, which form the subject-matter of this suit, is included within the holding of the defendant. In special appeal, two objections have been raised before us, namely, first, that as the first ground upon which the Judge's decision is based was not raised by the defendant either in the Court of first instance or on appeal, the Judge ought to have remanded the case to the first Court for the purpose of allowing the plaintiff a sufficient opportunity to prove that he was entitled to a kabuliat for a fractional share. And, secondly, that besides the lands which the Judge has found to be the lakhiraj lands of the defendant, there were other lands which form the subject-matter of the suit, regarding which the Judge ought to have determined whether the plaintiff is entitled to a kabuliat or not.

2. It is not necessary for us to express any opinion on the first ground. It is sufficient for us to say that the plaintiff has failed to make out that he is entitled to receive a kabuliat from the defendant for the full quantity of land mentioned in his plaint, and this case therefore comes within the purview of *Golam Mahomed v. Asmat Ali Khan Chowdhry* Case No. 1175 of 1867; March 19th, 1868 (B.L.R. Sup. 974). It matters very little whether the difference is in the quantity of the land or in the rate at which the kabuliat is asked for. The principle of the Full Bench Baling above referred to is equally applicable to both cases. The special appeal is dismissed with costs.