

(1879) 12 CAL CK 0013

Calcutta High Court

Case No: None

Parbutty Churn Sen
and Others

APPELLANT

Vs

Shaik Mondari

RESPONDENT

Date of Decision: Dec. 12, 1879

Citation: (1880) ILR (Cal) 594

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

Where a suit is brought u/s 52 of the Rent Law, for the recovery of arrears of rent and for ejectment in the same action, and the amount claimed is less than Rs. 100, an appeal cannot, u/s 102, lie to this Court. The ejectment of the ryot is not a necessary, consequence of execution of the decree in such a suit. It depends entirely upon a contingency arising out of the neglect or recusancy of the ryot to make payment within the time specified. That being so, the jurisdiction of the Court cannot possibly be affected by the conduct of one of the parties in the course of execution of the decree. The suit must, we think, be dealt with as it was originally laid, and the proceedings in execution treated as a part of that suit, and subject to the same rule as regards jurisdiction throughout its various stages, as the suit itself.

2. In this view the preliminary objection must prevail, and the appeal be dismissed with costs.