

**(1869) 04 CAL CK 0036**

**Calcutta High Court**

**Case No:** Special Appeal No. 2691 of 1868

Raja Baradakant Roy Bahadur

APPELLANT

Vs

Narakant Mazumdar and  
Another

RESPONDENT

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**Date of Decision:** April 28, 1869

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### **Judgement**

Mitter, J.

This was a suit for arrears of rent at an enhanced rate. The Court of first instance dismissed it upon the ground that the defendant had shown, by satisfactory evidence, that the tenure in question was not liable to enhancement. On appeal, the Judge has found that service of notice, u/s 13, Act X of 1859, has not been proved. He has further found that the defendant is unable to make out a title to exemption from enhancement. Upon these findings the Judge has dismissed the suit of the plaintiff for arrears of rent at an enhanced rate, but he has passed a decree in his favor, declaring that the defendant's tenure is liable to enhancement. We think the Judge had no right to make such a declaratory decree; the plaintiff having failed to prove service of notice, the suit, which was one simply for arrears of rent at an enhanced rate, ought to have been dismissed, and the Judge ought not to have proceeded further, in order to determine and to declare that the defendant's tenure is liable to enhancement. There is no provision whatever in Act X of 1859, which gives jurisdiction to the Revenue Courts to make such a declaratory decree.

2. The Judge has relied upon a decision of a Full Bench of this Court, in *Goomani Kazi v. Harrihar Mookerjee* Case No. 2463 of 1862, June 1st, 1863 (B.L.R. Sup. 15) But it appears that that suit was instituted before Act X came into operation; and the Civil Court, in which it was brought, being a Court expressly authorized by the provision of section 15 of the Code of Civil Procedure, to make a declaratory decree, it was held by the Full Bench that, although a plaintiff might not succeed in recovering any arrears of rent, at an enhanced rate, in consequence of his failure to prove service of notice, it was still competent to the Court to enter into the question, whether the defendant's tenure was liable to enhancement of rent, or not, and to pass a decree

in favor of the plaintiff, declaring that it was, if the evidence justified such a conclusion. We do not think that the present case can be governed by the Full Bench decision. It is quite clear that the jurisdiction of the Revenue Courts, under Act X of 1859, is a limited one; (and there being nothing in the provisions of the said Act authorizing) those Courts to make a declaratory decree, the present decree passed by the Judge declaring that the defendant's tenure is liable to enhancement, is null and void for want of jurisdiction. We, therefore, set aside the decision of the Judge, and dismiss the plaintiff's suit with costs of all the Courts.