

(1869) 05 CAL CK 0054

Calcutta High Court

Case No: Special Appeal No. 2970 of 1868

Fakiruddin Mohammed Ahasan

APPELLANT

Vs

Mr. C.J. Phillip

RESPONDENT

Date of Decision: May 8, 1869

Judgement

Norman, J.

The Judge is wrong, and there must be a remand. The case is an exceedingly simple one. The defendant took a lease from the plaintiff from 1270 to 1275, at a rent of rupees 1,200 a year. There was a provision in the lease that, if the rents were not paid, the plaintiff would be at liberty to appoint a Sazawal and make the collection himself, and the defendant was to appoint a person to see that the collections were duly made, and the accounts properly kept by the Sazawal. The rents of 1273 not having been paid, the plaintiff appointed a Sazawal and made considerable collections.

2. The Judge supposes that, by the appointment of a Sazawal, the plaintiff evicted the defendant and turned him out of the land demised; consequently he held that the plaintiff could not be made liable for the arrears of rent which accrued subsequently to the appointment of the Sazawal in the month of Aawin 1273; and as the collections made by the Sazawal exceeded the amount of rent due up to that date, the Judge was of opinion that there was nothing in respect of which the plaintiff was entitled to a decree in this suit. We think that in this suit, which is a suit for rent under Act X of 1859, the plaintiff is entitled to a decree for arrears of rent, at the rate of rupees 1,200 per annum, as claimed in his From the total rents which were originally due must be deducted what the plaintiff has received on account of those rents. In order to see that was the amount realized by him and applicable to the satisfaction of his claim, we must take not the gross-rents collected from the ryots by the Sazawal, but the net profits, that is to say, the realization less what in this case is called the "wages of the Sazawal," or, in other words, the cost of collection. The ultimate balance of the account is the rent due to the plaintiff.

3. The two cases referred to by the Judge do not show that a lease is avoided by the appointment of a Sazawal. In the latter case, which was an Act X suit, the plaintiff sought to make the defendant responsible for fraudulent conduct on the part of the Sazawal who had apparently embezzled rents collected by him. In the case in 1862, the plaintiff had kept a Sazawal for a length of time, and treated the tenure as having been resumed by him.

4. In the present case the Sazawal was making the collections under the inspection of the defendant himself; and it is clear that, by the original contract, the parties intended to treat the interest of the defendant as continuing, notwithstanding the appointment of the Sazawal. The case is remanded to be re-tried with reference to the above remarks. The appellant will get his costs of this appeal.