

(1869) 07 CAL CK 0037

Calcutta High Court

Case No: Special Appeal No. 1012 of 1869

Lalit Jha and Others

APPELLANT

Vs

J.B. Bullen and Another

RESPONDENT

Date of Decision: July 8, 1869

Judgement

Kemp, J.

This was a suit for the rent of 1275. The plaintiff alleges that the defendant took a lease of the properties for which the rent is claimed from the year 1274 to the year 1283, at a jumma of rupees 249, on a kabuliat dated the 20th September 1865. The first Court, on the plea raised by the defendant that he never obtained possession, framed an issue, whether the plaintiff, the landlord, had given the defendant possession or not; and after a local inquiry found that the landlord had never given the defendant possession, and that the landlord himself had never been in possession, and therefore dismissed the suit. On appeal, the Judge reversed the decision of the first Court, finding that in a suit for the rent of 1274, the Judge has found that the defendant had signed a lease and had got possession according to his own admission, and therefore was answerable for the rent. It is not disputed that the defendant signed a kabuliat; the real contention on his part is that before the landlord can maintain his action for rent against him, he ought to show that he has given possession to the tenant, but not having been able to show that, he is not entitled to recover any rent. We think that the real issue between the parties is as laid down in the first Court, namely whether possession has been given or not; and we think that it would be highly inequitable to pass a decree against the defendant for rent, unless we are satisfied that he is in possession of the land leased to him. It appears to us very clear that he is not in possession; the local inquiry establishes the fact of non-possession, and all the probabilities of the case support the defendants' contention, for it is not easy to understand why an indigo planter should give up land which he could cultivate at a profit by refusing to pay rent, a rent which is certainly not an excessive one if he were in possession. The Judge alludes to an admission by the defendants' manager Carleton. It appears that Carleton did put in a petition under Act VI of 1862, applying for permission to measure the estate, and there may have been a recital in that petition that he was in

possession; it appears to us very probable that this petition was put in, in the attempt to get possession, but be that as it may, we cannot overlook the fact which has been found on the evidence, that the tenant has not been put in possession. Following therefore the decision in Hurish Chunder Koondoo v. Mohinee Mohan Mitter 9 W.R. 582, which has already been followed by us in another case, we reverse the decision of the Judge, restore that of the first Court, and decree this appeal with all costs payable by the special respondents.