

(1936) 02 PAT CK 0017
In the Patna High Court

Amal Krishna Rai and Others

APPELLANT

Vs

Kedarnath Banerjee and Others

RESPONDENT

Date of Decision : 07-02-1936

Acts Referred:

Citation : AIR 1936 Patna 306

Hon'ble Judges : Rowland, J;Mohamad Noor, J

Bench : Full Bench

Judgement

Rowland, J.—It seems that grounds on which the Subordinate Judge and the District Judge have held that the plaintiffs are entitled only to a money decree against defendant 1 and not to a charge decree against the property in the presence of defendants 1, 2 and 3 cannot be supported. The terms of the lease as stated in the judgments of the Courts contain a clear stipulation that the rent is a charge on the property. There is also a stipulation that half the rent was payable to the plaintiff's predecessor and half to the predecessor of the pro forma defendants. This does not prevent the charge attaching to the whole property in respect of each of the demands on it. The Courts below seem to think that the charge decree should be refused because defendants 4 and 8 have not joined as plaintiffs. When the plaintiffs have sued bringing these defendants on the record I do not think that there is any defect in the frame of the suit. I would allow the appeal and give the plaintiffs a charge decree as prayed for.

Mohamad Noor, J.

2. I agree.