

**(1950) 04 CAL CK 0003**  
**In the Calcutta High Court**  
**Case No : Civil Revision Case No. 47 of 1950**

|                                           |            |
|-------------------------------------------|------------|
| Badal Chandra Pandit Karmakar and Another | APPELLANT  |
| Vs                                        |            |
| Kalipada Pandit Karmakar and Another      | RESPONDENT |

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**Date of Decision :** 15-04-1950

**Acts Referred:**

Bengal Tenancy Act, 1885 — Section 22(2)

**Citation :** 55 CWN 51

**Hon'ble Judges :** Roxburgh, J

**Bench :** Single Bench

**Advocate :** Bankim Chandra Roy, for the Appellant; Purushottam Chatterjee and Amiya Kumar Mukhopadhyaya, for the Respondent

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## Judgement

Roxburgh, J.—This is a Rule against a decree of the Munsif at Bishnupur decreeing the Plaintiffs' claim for the recovery of Rs. 116-6 as a fair and equitable sum due on account of the use and occupation of the plaint lands by the Defendants. The Plaintiffs and the Defendants are the shebaites of a certain deity. The suit lands formed a tenancy under the deities landlords and the shebaites used to collect their share of the rent separately. The Plaintiffs' case is that there was a separate arrangement for such collection. The Defendants shebaites in fact sued the tenants for their share of the rent and in execution of the decree purchased as shebaites the tenancy. The Plaintiffs now claim their proportionate share of the produce of the suit lands. The Defendants take various, not to say inconsistent, defences. The principal point urged here and supported by reference to *Narendra Nath Kumar v. Atul Chandra Banerjee* (27 C. L. J. 605) and *Baraboni Coal Concern, Ltd, v. Gokulananda Mohanta Thakur* (61 I. A. 85 : s. o. 88 C. W. N. 325 (1938)) is that co-shebaites must all sue for rent and that they cannot act separately as co-sharers and sue for their own share of the rent. This contention is put forward as challenging the Plaintiffs' case but entirely overlooks the fact that the contention serves to point out that the Defendants' own suit for their separate share of rent was not maintainable. In that suit the present Plaintiffs were parties and no objection was raised by any

one on the basis that that suit was not maintainable and it does not seem to me, therefore, that in the present case it is open to the Plaintiffs in that suit, now Defendants in the present suit, to raise that point.

2. In any case, we are here concerned with the case of amicable arrangement between the co-shebaitis and their liabilities as between each other. The lower Appellate Court, it is true, appears to find the suit justified by the provisions of sec. 22 (2) of the Bengal Tenancy Act. It cannot be said that co-shebaitis are in fact co-sharers to whom this provision directly applied but in the present case it is clear that the tenancy was purchased by the present Defendants as shebaitis that is to say, on behalf of the deity, and that they are not in khas possession of the land, and it seems to me that the Plaintiffs are, therefore, entitled in view of the previous arrangement for separate collection of shares of rent now to obtain from the Defendants shebaitis who are on behalf of the deity in full possession of the lands of the former tenancy, their share of the produce thereof.

3. The suit is in essence a suit for mesne profits. Such a suit is maintainable in the Small Cause Court. [Vide *Kunjo Behary Singh v. Madhub Chundra Ghose* ((1900) 23 Cal 884)]. This last point meets the only other matter raised on behalf of the Petitioners before me, namely, that the present suit was not maintainable in the Court of Small Causes.

4. The result is that I see no reason to interfere with the lower Court's decree. The rule is accordingly discharged with costs.