

(1915) 05 CAL CK 0031
In the Calcutta High Court

Behari Lal Nandy and Others

APPELLANT

Vs

Kedar Nath Nebu and Others

RESPONDENT

Date of Decision : 03-05-1915

Acts Referred:

Citation : 29 Ind. Cas. 806

Hon'ble Judges : Roe, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is a Rule calling upon the opposite party to show cause why the decree of the Small Cause Court complained of should not be set aside. The plaintiffs are the petitioners in this Rule. The plaintiffs brought the suit against the defendant No. 10 and others claiming damages for the wrongful removal of fish from a tank. The defendant No. 10 is a co-sharer of the plaintiffs and the other defendants. He set up the plea that, by means of an arrangement arrived at between him and the other sharers, he had been put in possession of the tank with the right of fishery therein for a period of nine years and that he removed the fish under such authorization. It is said that that lease is void having regard to the provisions of the Transfer of Property Act. That makes no difference in a suit like this, because the act that was done in removing the fish is a past act and at that time, if under an arrangement, lease or license, whatever it may be called, the right was in existence, the defendant No. 10 was justly exercising his right in fishing in the tank and damages cannot be claimed against him. I see no reason to differ from the conclusion arrived at by the learned Judge of the Small Cause Court that there was an arrangement by which the defendant No. 10 had been put in possession of the tank with the right to take fish from it. The view that the learned Judge has taken is that, owing to the large accession of fish in the tank that arose from the flood last year, the plaintiff required further rent from the defendant No. 10 and it was only when the defendant No. 10 refused to pay the increased rent that the present suit was lodged against him. That seems to be amply sufficient to dispose of the present Rule without considering whether, if the lease is not proved, the defendant No. 10 as a co-sharer had the right to

remove the fish without being liable to account to his co-sharers. The present Rule, therefore, fails and must be discharged with costs, two gold mohuri.

2. Roe, J.--I agree.