

(1889) 07 CAL CK 0016
In the Calcutta High Court

Dwarka Nath Mitter (as Shebait of the Idol Radharaman Jin
and also for self and others) and Others APPELLANT

Vs

Tara Prosunna Roy and Others RESPONDENT

Date of Decision : 22-07-1889

Acts Referred:

Citation : (1890) ILR (Cal) 160

Hon'ble Judges : Prinsep, J; Hill, J

Bench : Division Bench

Judgement

Prinsep and Hill, JJ.—We think that the judgment of the District Judge is correct, and that this appeal must be dismissed.

2. The plaintiffs, as some of a body of persons entitled to a balance of arrears of rent, have brought this suit making their co-sharers defendants. They state that they have made them defendants because they are residents of a distant place; from which it may be inferred that they would have had some difficulty in obtaining their consent; and, no doubt, this is true, because it would seem that the suit has been brought on the very last day of the period prescribed by the law of limitation.

3. An objection as to the form of the suit was, as stated by the District Judge, pressed from the very first by the defendants. We have no doubt that it is only when the plaintiffs can show that those entitled to join with them have refused to join or have otherwise acted prejudicially to their interests, that they are entitled to sue alone and to make the reluctant or refusing co-sharers defendants in the suit, As authority for this we may refer to the case of Luke v. South Kensington Hotel Co. L.R. Ch. D. 121 also to the cases of Patiharipat Krishnan Unni Nambiar v. Chekur Manakkal Nilakandan Bhattathiripad ILR Mad. 141 and Kalidas Kevaldas v. Nathu Bhagvan ILR Bom. 217; and we may further refer to Ramsebuk v. Ramlall Koondoo ILR Cal. 815. In the case of Prem Chund Luskur v. Mokshoda Debi ILR Cal. 201 it was expressly stated that the co-sharers of the plaintiffs had refused to join in the suit. On these grounds, therefore, we think

that the suit was rightly dismissed, and that this appeal must be dismissed with costs.