

**(1885) 05 CAL CK 0004**  
**In the Calcutta High Court**

Mukta Sundari Dasi and Others

APPELLANT

Vs

Kowsulliah Sundari Dasi and Another

RESPONDENT

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**Date of Decision :** 21-05-1885

**Acts Referred:**

Evidence Act, 1872 — Section 18

**Citation :** (1885) ILR (Cal) 588

**Hon'ble Judges :** Richard Garth, C.J.; Ghose, J

**Bench :** Division Bench

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## Judgement

Richard Garth, C.J.—In this case the plaintiffs took an ijara lease from the zamindar of certain property, in which was included a tenure, which had been held by the defendants at a certain rent for a great many years.

2. The plaintiffs' case was that, under an arrangement which they made with the defendants sometime ago, the defendants were to pay, and have always paid, their rent and cesses to the zamindar instead of to the plaintiffs, and that these payments had always been received by the zamindar on the plaintiffs' account and placed to their credit.

3. This being the arrangement, the plaintiffs say that the defendants, in breach of it, did not pay to the zamindar the rents or cesses, which they ought to have paid for the years 1283 to 1287, and consequently the zamindar brought a suit against the plaintiffs to recover those rents and cesses, and recovered the amount.

4. This suit was then brought by the plaintiffs to recover from the defendants the sums which, according to the arrangement, they ought to have paid to the zamindar; and the lower Appellate Court has held that the arrangement relied upon has been proved, and that the plaintiffs are entitled to recover the sums claimed from the defendants.

5. But it has been contended by the appellants (amongst other things) that, incoming to this conclusion, the lower Appellate Court has admitted and acted

upon certain evidence, which was not legally admissible.

6. It appears that in the suit which was brought by the zamindar against the plaintiffs, one of the defendants was called as a witness on behalf of the zamindar, and spoke to the existence of the arrangement on which the plaintiffs rely. This deposition, made in the former suit, has been given in evidence in this suit and received by the Court below.

7. It is contended by the defendants that this was wrong. It is said that the statement of one of the defendants might have been received as an admission against himself only, but not as against the other defendants.

8. I think, however, the lower Court was right. Where there are several co-contractors, or persons engaged in one common business or dealing, a statement made by one of them with reference to any transaction which forms part of their joint business, has always been held admissible as evidence as against the others.

9. The rule is thus laid down in Taylor on Evidence, Vol. I, 1st edition; p. 489, Section 525:

When several persons are jointly interested in the subject-matter of the suit, the general rule is that the admissions of any one of those persons are receivable against himself and fellows, whether they be all jointly suing or sued, provided the admission relates to the subject-matter in dispute and be made by the declarant in his character of a person jointly interested with the party against whom the evidence is tendered.

See also *Kemble v. Farren* 3 C. & P. 623; *Lucas v. De la Cour* 1 M. & S. 249.

10. The principle of this rule is, that for the purpose of making these statements with reference to the joint concern or common subject of interest, one partner or co-contractor is considered to be the agent of the others; and this rule, as I take it, is enacted, though in a somewhat concise form, in Section 18 of the Indian Evidence Act.

11. As this is the only point of law raised which is worthy of notice, I think that the appeal should be dismissed with costs.

Ghose, J.

12. I concur in dismissing the appeal, as I think there was sufficient evidence in point of law to justify the finding of the Court below.