

(1869) 09 CAL CK 0005
In the Calcutta High Court
Case No : Special Appeal No. 1522 of 1868

Raja Indra Bhusan Deb Roy

APPELLANT

Vs

Akhoy Sankar Chuckerbutty

RESPONDENT

Date of Decision : 07-09-1869

Acts Referred:

Citation : (1869) 09 CAL CK 0005

Judgement

Sir Barnes Peacock Kt., C.J.—I see no reason to change the opinion which I expressed in the Full Bench decision in Thakooranee Dossee v. Bisheshur Mookerjee Case No. 2061 of 1864; June 19th, 1865 (B.L.R. Sup. 202), that a land-holder cannot sue for a kabuliat at an enhanced rate of rent, without giving the notice required by section 13 of Act X of 1859. At the time of the Full Bench decision in Golam Mahomed v. Asmutt Alee Khan Chowdhry Case No. 1175 of 1867; March 19th, 1868 (B.L.R. Sup. 974.), I certainly thought that I was in a minority in the Full Bench decision in Thakooranee Dossee v. Bisheshur Mookerjee Case No. 2061 of 1864; June 19th, 1865 (B.L.R. Sup. 202), the first Full Bench decision to which I have referred. I have no doubt I was misled by the marginal note 3 W.R. Act X, Rul. 29 in that case in which it was said that "a suit for a kabuliat may be brought without "notice of enhancement (Peacock, C.J. and NORMAN, J., dissenting); but in such a suit brought without notice, the kabuliat cannot be decreed, "except to commence with the year following that in which the decree "is given." According to my recollection at the time, I thought that that marginal note was correct; but it appears now that there was not a majority of the Judges of the Full Bench in favour of that position; many of the Judges did not express any opinion on that point, and it did not arise in the case. In the Full Bench decision in Ram Kanth Chowdhry v. Bhoobun Mohun Biswas Case No. 2216 of 1862; July 7th, 1864, (B.L.R. Sup. 25), it was not held that a suit for a kabuliat at an enhanced rent would lie without notice, but merely that a suit for a kabuliat would lie without notice-under section 13, Act X of 1859. I cannot add much to what I said in the first Full Bench case to which I have referred; but it is clear, as shown by Mr. Justice Norman, that, if the commencement of the action

for a kabuliat at an enhanced rate of rent is tantamount to a notice u/s 13, the commencement of the action creates a cause of action, which did not exist at the time when the suit was commenced; whereas a cause of action must accrue before a suit can be commenced upon it. Again, if a notice of enhancement be given u/s 13, six months before the month of Cheit, that notice can merely lie to enhance the rents of the ensuing year. If such notice were given, no suit could be commenced before the ensuing year for enhanced rates for that year, and the ryot u/s 19, knowing that his landlord intended to enhance his rent, might, in or before the month of Cheit after the notice, relinquish the land in respect of which the rent was sought to be enhanced. But if the suit to enhance is tantamount to a notice, it must be commenced in or before the month of Cheit, in order to enhance the rent of the succeeding year; and if commenced six months before the end of Cheit, all the expenses of the suit might be incurred before the end of Cheit, and the whole expenses of the suit, and the vexation attending upon it, would be unnecessarily incurred, if the tenant in the month of Cheit should give notice of his intention to relinquish the land.

2. I think it was urged in the course of the argument that, if the suit was brought before the month of Cheit, the tenant would not be allowed to relinquish. But if that contention is correct, it shows that the commencement of the suit would deprive the ryot of the right to avail himself of the provisions of section 19 of the Act. It appears to me to be quite clear that a suit to enhance is not tantamount to a notice given before the commencement of the suit.

3. As to the other point, it appears to me that a suit cannot be brought to compel the tenant to execute a kabuliat, unless the landlord has tendered a patta to him, such as he was entitled to receive. Whether after the expiration of the notice to enhance, a suit could be commenced to declare what were the fair and reasonable rents, and that the tenant would be bound to execute a kabuliat at those rents upon the landlords executing or tendering him a patta, is a matter on which it is not necessary for me to express any opinion. It was stated in argument that there is a case to that effect decided in the Agra Court. We have not seen the report itself, hut merely an abstract of it cited from a text-book March 31st, 1863; cited in Irvine's Rent Digest, 149.

4. The first question must be answered in the affirmative, that in order to entitle a landlord to sue for a kabuliat, he must tender a patta; and as to the second question, we hold that a suit for a kabuliat at an enhanced rate of rent cannot be supported, without a previous notice u/s 13, Act X of 1859. The decision of the lower appellate Court will be reversed with the costs of this appeal, and the coats in the lower appellate Court.