

(1869) 01 CAL CK 0006

In the Calcutta High Court

Case No : Special Appeals Nos. 1339 and 1341 of 1868

Rani Saratsundari Debi

APPELLANT

Vs

Watson and Others

RESPONDENT

Date of Decision : 08-01-1869

Acts Referred:

Citation : (1869) 01 CAL CK 0006

Judgement

Norman, J.—This was a suit for a kabuliat. The plaintiff alleged that the portion of the land occupied by the indigo factory of Messrs. Robert Watson and Company, included within specific boundaries given at the foot of the plaint, appertain to 5?-anna share of Laskarpore, of which the plaintiff is the proprietor of one-half. The first Court dismissed the suit upon the ground that the defendant had been in possession, and held the premises at an uniform rent from the time of the permanent settlement. The Judge, on appeal, held that the plaintiff was not entitled to a kabuliat, because that the plaintiff had given no evidence that the specific portion of land described 12 bigas belonging to the 5?-anna shareholders of Laskarpore, was a distinct and separate holding; and he said that the suit should be dismissed, the plaintiff's suit having been instituted to obtain a kabuliat in respect of that which appears to be an undivided share. The plaintiff appealed, and took the ground that no issue was raised as to whether or not the 5?-anna shareholders of Laskarpore held a separate portion of the land, or whether the whole of the defendant's holding was part of an ijmalī holding, and the plaintiff asks that the case may be remanded. This, however, appears to be unnecessary, because even assuming that the 5?-anna shareholders held separately 12 bigas of the land occupied by the defendant, it is clear that the plaintiff does not allege that he held any distinct portion of this land as a separate estate. We do not find in Act X, or under any decision of this Court, any authority to the effect that one, who is entitled to a fractional share of an undivided estate, though he receives a definite portion of the rent from the tenant or ryot, is entitled to maintain a suit for a separate kabuliat in respect of such undivided share. We are not now considering what may be his rights to sue

to enhance the rent which is paid with respect to his undivided share. We think that Act X contemplates only the giving of pottas of entire holdings and kabuliats of entire rents. We think it would be a grievous hardship on ryots, if they were compellable to take separate pottas from the several holders of undivided shares, or to give separate kabuliats to such persons. The decision of the Court below appears to be correct. The appeal is dismissed with costs.

2. This decision governs the special appeal No. 1341 of 1868, which is also dismissed with costs.