

(1898) 09 CAL CK 0007
In the Calcutta High Court

Romesh Chandra Biswas and Others

APPELLANT

Vs

Ghulam Nabi Fakir

RESPONDENT

Date of Decision : 06-09-1898

Acts Referred:

Citation : 29 Ind. Cas. 807

Hon'ble Judges : Pratt, J;O'Kinealy, J

Bench : Division Bench

Judgement

1. This is an appeal from a decision of the Subordinate Judge of Rangpur, dated the 4th February 1897.

2. The suit was for rent and was based on a kabuliat dated the 1st Baisak 1295. The parties have left the case in such a position that all we have to do is to construe that document. Nothing in regard to conduct amongst themselves has been left to us to determine. The document is in regard to a meadi sarasari jote, and was to have effect for three years. In the first column of the schedule of land and jama set out in that document is a description of the land, in the second column is the total area, in the third column the rate per bigha, in the fourth column is the rent in sicca rupees, in the fifth column is the batta on the Company's coin, in the sixth column is the total rent in the Company's coin, which is stated at Rs. 19-0-18 1/4 gandas, in the seventh column is the hajat allowed till the end of the term, which is stated at Rs. 10-8-4 1/2 gandas, and in the last column is the balance, being the net rent payable which is stated at Rs. 8-8-13 3/4 gandas. Further on the document runs thus: "And on the expiry of the term of this daul, I shall pay in the manner aforesaid the full jama of Rs. (19-0-18 1/4) nineteen and gandas eighteen and a quarter including the said amount left in abeyance." The plaintiffs now sue after expiry of the three years for the full jama of Rs. 19-0-18 1/4. The defendant denied the kabuliat altogether. He also stated that he knew nothing about hajat in the kabuliat. But subsequently he admitted that he executed this document.

3. On the face of the document it appears that the rent fixed was Rs. 19-0-18 1/4

but that the landlords allowed a certain amount to be held in abeyance for three years, and for those three years, year by year Rs. 8-8-13 $\frac{3}{4}$ were to be paid by the defendant according to the instalments mentioned. In that view of the case what the plaintiffs sued for was not enhancement, no more than if a landlord gave a receipt for half the rent for the first year, half the rent for the second year and half the rent for the third year, and subsequently sued for the whole rent. It may be for, ought we know, that it was never intended to act upon that document, but no such case was placed before us.

4. We, therefore, set aside the decree of the lower Appellate Court, and restore that of the Court of first instance, with costs in all the Courts.