

(1918) 03 CAL CK 0016
In the Calcutta High Court

Rudra Nath Roy and Others

APPELLANT

Vs

Joy Chand Kaibartna (Das) and Others

RESPONDENT

Date of Decision : 20-03-1918

Acts Referred:

Citation : 46 Ind. Cas. 280

Hon'ble Judges : Shamsul Huda, J; Fletcher, J

Bench : Division Bench

Judgement

1. In this case, the plaintiffs appeal against the decision of the learned Subordinate Judge of Sylhet, dated the 23rd December 1915, and the defendants have preferred a cross-appeal. It will be convenient in the view we take of the case to deal with the cross-appeal first. The plaintiffs are co owners or part owners of a certain bil. The defendants have a lease from some of the other co-owners. That is a fact found. The defendants have caught fish from that bil and apparently have made a profit by the sale thereof. The plaintiffs do not allege that they have been excluded from exercising their rights, but they want to have by way of damages a portion of the value realized by the defendants by the sale of the fish that they have caught. The plaintiffs cannot have any such right. It has not been shown that when they had gone there for fishing they had been prevented by the defendants or that they could not get ample fish in the bil to satisfy their right of fishery. An action like this does not lie. In that view we must allow the cross-appeal filed by the defendants and dismiss the plaintiffs' suit with costs in all Courts. The defendants are also entitled to their costs in the cross-appeal.

2. In the view we have taken, it is not necessary to make any finding as to the share of the plaintiffs. That matter is left open between the parties.