

(1869) 01 CAL CK 0003
In the Calcutta High Court
Case No : Special Appeal No. 907 of 1868

Sib Sahaya Sukul

APPELLANT

Vs

Bir Chandra Jubaraj Goswami

RESPONDENT

Date of Decision : 09-01-1869

Acts Referred:

Citation : (1869) 01 CAL CK 0003

Judgement

Bayley, J.—On this special appeal coming on for hearing, the special respondent took an objection u/s 348, Act VIII of 1859, that the suit being one for damages of an amount below 500 rupees, and, therefore, cognizable by the Small Cause Court, no special appeal would, u/s 27, Act XXIII of 1861, lie to this Court. I am of opinion that this objection is sound and valid. It is quite clear from the judgment of both the lower Courts that the whole contention was, whether or not the plaintiff was entitled to recover, from the Maharaja defendant, the sum which he alleged he had paid over and above what was due from him to the Maharaja on account of rent. In fact, whether, plaintiff having paid it in excess, and it not having been refunded by defendant, there arose a damage to him (plaintiff) or not. This is not a case of contribution for shares of rent as against coparceners, which has been held by the Full Bench as not coming within the jurisdiction of the Small Cause Court with reference to Section 6 of Act XI of 1865. Although the transaction originally may have been connected with payment of rent for coparceners, still the present claim of the plaintiff is for a refund of the money over-paid by him to the defendant, landlord, by the non-refund of which he, the plaintiff, has been undamaged.

2. The special appeal is dismissed with costs.

Hobhouse, J.

I agree. I think that the provision of Section 27, Act XXIII of 1861, bars this special appeal.