

*Before Mr. Justice Bayley and Mr. Justice Mitter.*

UDAYA CHARAN DHUR, (PLAINTIFF) v. KALI TABA DAS<sup>1</sup> INTERVENOR  
AND ANOTHER (DEFENDANTS)\*

*Kabuliat—Fractions of Shares.*

1869  
April. 26.

One of the shareholders of an undivided zemindari cannot institute a suit to obtain a separate kabuliat from a ryot for his fractional share thereof.

Baboo *Abhaya Charan Bose* and *Mahendra Lal Mitter* for appellant.

Baboo *Rajendra Nath Bose* for respondent.

The judgment of the Court was delivered by

MITTER, J.—This was a suit for a kabuliat instituted under the provisions of section 23, Act X. of 1859. The lower Appellate Court has found, that the plaintiff has failed to prove that any relationship of landlord and tenant existed between him and the defendant.

The plaintiff appeals<sup>2</sup> specially, urging that the only point which the lower Appellate Court ought to have tried was, whether the intervenor had been in the *bona fide* receipt and enjoyment of the rent up to the date of suit, and that on the failure of the intervenor establishing this point, a decree ought to have been passed in his (plaintiff's) favor, as a matter of course. But it is unnecessary for us to enter into this question. It is quite clear, that the plaintiff is not entitled to a kabuliat upon the facts admitted by him in his own plaint. The plaintiff admits that the lands are held by the defendant, under several land-holders, between whom no partition has yet been made, and this suit is for a kabuliat for one-third share of the rents payable by the defendant.

We are of opinion that such a suit cannot be maintained. When a ryot is holding land covered by a single lease under several landholders, and no partition has been made between those landholders, one only of the coparceners has no right to sue for a kabuliat for his own fractional share. A point very similar to this was discussed in the case of *Rani Sarat Sundari Devi v. Watson* (1), and it has been distinctly held that “a proprietor “ of a fractional share of an undivided estate, though receiving a definite “ portion of the rent from the ryot, is not entitled to maintain against him “ a suit for a separate kabuliat in respect of such undivided share.”

It is not necessary for us to go to the same length as the learned Judges did in that case, for there is no proof by the plaintiff that either he or his predecessors had been collecting rents separately from the defendant.

Under such circumstances, the plaintiff's suit must fail, and this appeal dismissed with costs in favor of the intervenor only, the ryot defendant not having appeared.

\* Special Appeal, No. 3033 of 1868, from a decree of the Judge of Dacca, dated 3rd September 1868, affirming a decree of the Deputy Collector of that district, dated 29th February 1868.

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

BECHARAM CHOWDHRY (ONE OF THE DEFENDANTS) v. PUHUBNATH JHA  
(PLAINTIFF)\*

1869  
April. 26

*Use of Water Rights—Injury to Neighbouring Land.*

No proprietor can lawfully pen back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent.

Baboo *Budh Sen Sing* for appellant.

Baboo *Krishna Sakha Mookerjee* for respondent.

The facts are sufficiently stated in the judgment of

NORMAN, J.—In this case the defendant erected a bund across a stream, the effect of which has been to throw back the water of the stream upon the land of the plaintiff, and destroy his crops. The lower Appellate Court has given the plaintiff a decree for the amount of injury which he sustained. There is no doubt that the decision of the lower Appellate Court is quite correct. The rule, regulating the enjoyment of water flowing in its natural course, is that no proprietor can lawfully pen back the water by erecting a bund upon his own land, so as to inundate the land of his neighbour without the license or consent of that neighbour. The rule is clearly stated in page 334 of the third edition of Broom's Legal Maxims, under the maxim "*sic utere tuo ut alienum non lædas*," in other words, every man must enjoy his own property in such a manner as not to injure that of any other person.

The Appeal is dismissed with costs.

*Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

RANI SARATSUNDARI DEBI AND ANOTHER (PLAINTIFFS) v.  
SURJA KANT ACHARJI CHOWDHRY AND OTHERS  
(DEFENDANTS)†

- 1869  
April. 28

*Plaint—Cause of Action—Multifariousness.*

When a plaint discloses different causes of action against different parties it is bad in law, and the suit is not maintainable.

This was a suit for confirmation of right, and possession of about 350 khadals of land within the boundaries mentioned in the plaint, being contiguous accretions to the village of Subarnakhali within Pergunna Pakurea Jainshahi,

\* Special Appeal, No. 2373 of 1868, from a decree of the Subordinate Judge of Zilla Purneah, dated the 8th of June 1868, modifying a decree of the Moon-siff of Arraria in that district, dated the 6th of February 1868.

Regular Appeal, No. 250 of 1868, from a decree of the Subordinate Judge of Mymensingh, dated the 20th August 1868.