

plaintiff's father, who seems to have attained his majority in 1829, did not bring the suit. The present suit is, therefore, barred by section 5 of Act XIV. of 1859.

The result is that the appeal will be dismissed. The respondents will recover their costs in proportion to their respective interests.

1869
 MAHARANI
 BEAJA SUNDARI DEBI
 v.
 RANI LACHMI
 KUNWARI.

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

RANI SARATSUNDARI DEBI (PLAINTIFF) v. WATSON

AND OTHERS (DEFENDANTS)*

1869
 Jany. 8.

Suit for Kabuliati—Fractional Share in Undivided Estate—Act X. of 1859.

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 kabuliati in respect of such undivided share.

Baboo Debendra Narayan Bose for appellant.

Messrs. Allan and Rochfort for respondent.

THE facts of this case appear sufficiently from the judgment of the Court, which was delivered by

NORMAN, J.—This was a suit for a kabuliati. 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 5½-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 kabuliati, because that the plaintiff had given no evidence that the specific portion of land described 12 bigas belonging to the 5½-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 kabuliati in respect of that which appears to be an

* Special Appeal, Nos. 1339 and 1341 of 1868, from decrees of the Judge of Rajshahye, dated the 4th March 1868, affirming decrees of the Deputy Collector of that District, dated the 31st October and 30th November 1867.

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undivided share. The plaintiff appealed, and took the ground that no issue was raised as to whether or not the 5½-anna shareholders of Laskarpore held a separate portion of the land, or whether the whole of the defendant's holding was part of an ijmal holding, and the plaintiff asks that the case may be remanded. This, however, appears to be unnecessary, because even assuming that the 5½-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 kabuliati 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 kabuliatis 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 kabuliatis to such persons. The decision of the Court below appears to be correct. The appeal is dismissed with costs.

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

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

BIR CHANDRA JUBARAJ GOSWAMI, INTERVENOR, v. MADHAB
 KAIBARTA, PLAINTIFF.*

1869
 Jan'y. 8.

Act X. of 1859, s. 77—Adding Parties.

In a suit against ryots for arrears of rent of certain lands, the appellant intervened, seeking to be added as a party under section 77 of Act X. of 1859, on the ground that his title to the lands in question had been declared by the decree of a Civil Court. *Held*, (reversing the decision of the Collector) that the Deputy Collec-

* Special Appeal, No. 154 of 1868, from the decision of the Judge of Tipperah, dated 4th May 1868, reversing a decision of the Deputy Collector of Brahmanbaria dated 26th March 1868.