

(1869) 05 CAL CK 0045
In the Calcutta High Court
Case No : Special Appeal No. 70 of 1869

Brajakisor Sen

APPELLANT

Vs

Kasimali and Others

RESPONDENT

Date of Decision : 31-05-1869

Acts Referred:

Citation : (1869) 05 CAL CK 0045

Judgement

Hobhouse, J.—This was an application for measurement under the provisions of section 9, Act VI of 1862, B.C. In answer to the application the ryots put in two objections. Firstly they said they had not opposed the measurement, and then they said that if the measurement was to be made it was to be made with a pole of 13 inches to a cubic foot, being the standard pole of measurement of the pergunna in which the lands were situate. The first Court held as matters of fact, firstly that the defendants had opposed the measurement, and secondly that the standard pole was one of 18 inches, and the Court thereupon gave the plaintiff a decree, authorizing him to measure the lands, restricting his measurement to a pole of 18 inches.

2. The plaintiff appealed to the Judge solely (as the Judge says) "with regard to the length of the measuring pole to be used in effecting the measurement." The Judge held that he had no jurisdiction to go into this question of the measuring pole, and he therefore dismissed the appeal. In special appeal it is contended that either the Judge's decision was wrong and he had jurisdiction to enquire into this question of the measuring pole and should be directed therefore to try this question, or else that the Collector's decision was wrong in going into and determining the question, and should be therefore set aside for want of jurisdiction. We think that the Judge's decision is right, and that the Collector's decision is wrong, and passed without jurisdiction. By the provisions of sections 9 and 11 of Act VI of 1862, the plaintiff in this case had certainly the right to measure the lands comprised in his estate, and that right was clearly subject to this restriction, viz., that the measurement should be made according to the standard pole of the pergunna; and possibly had this been a case of application

for measurement u/s 10 of the Act, the Collector might have had jurisdiction to declare the length of the standard rod, and the Judge might have had jurisdiction to entertain and determine an appeal from the Collector's decision on this point. But the application here was an application under the provisions of section 9, and in the words of the law the Collector was bound to proceed to enquire into such application and to pass a decision either allowing or disallowing the measurement. The point therefore, and the sole point before the Collector under the provisions of section 9, was whether the measurement should be allowed or not; and there was not and could not be before the Collector the point as to the length of the measurement rod, because until the zamindar had been permitted to measure and had proceeded to measure, there could be no issue as to the measurement rod that he was to be permitted to use, In the cases of Turrucknath Mookerjee v. Meydee Biswas 5 W.R. Act X, Rul. 17 and Rakhaladas Mookerjee v. Tunnoo Puramanick 7 W.R. 239, there are judgments of Division Benches of this Court, which, on other grounds, support this view of the law, and share is an unreported judgment of a Division Bench of this Court, which is directly with us, Ramanath Rakhit v. Muckiram Paramanik See 3 B.L.R. Appx. p. 63. Following these judgments we direct that so much of the Collector's decision as allows the plaintiff to measure should stand, but that so much of the decision as declares what is the standard pole of measurement of the pergunna by which the plaintiff is to measure shall be set aside as passed without jurisdiction. The special appellant will get his costs of this Court.