
(1921) 08 CAL CK 0010
In the Calcutta High Court

Brindaban Chandra Chakravartti

APPELLANT

Vs

Jnanendra Nath alias Kules Chandra Chakravartti and Others

RESPONDENT

Date of Decision : 05-08-1921

Acts Referred:

Bengal Tenancy Act, 1885 — Section 93, 95, 98

Citation : AIR 1921 Cal 564 : 64 Ind. Cas. 819

Hon'ble Judges : Panton, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. We are invited in this Rule to cancel an appointment of a Common Manager under the Bengal Tenancy Act, on the ground that the order was made without jurisdiction.

2. It appears that on the 31st May 1918 an application for the appointment of a Common Manager was made u/s 93 of the Bengal Tenancy Act. On the 27th August 1918, Mr. Jnan Ranjan Sen, a Pleader of the lower Court, was appointed Common Manager. But difficulties arose in the management of the estate and on the 14th April 1920 the Common Manager tendered his resignation, which was accepted on the 5th July 1920. The District Judge thereupon proceeded to appoint the opposite party, one of the co-sharers, as successor to the Common Manager previously appointed, We are now invited to discharge this order on the ground that the District Judge was not competent to appoint a successor to the Common Manager, in the absence of statutory provision which authorised him to make an order of this description. In support of this view, reliance has been placed on the decision in Dwarka Nath Mitra v. Bankutesh Lal 10 C.W.N. 437, In that case, on the resignation of a Common Manager duly appointed the District Judge proceeded to appoint his successor. It was urged that after he had once made the appointment u/s 95 of the Bengal Tenancy Act, the District Judge could not appoint a successor in the event of a vacancy. This Court held that "as there was no express provision authorising the District Judge to make an order of this description, the inference followed that the Judge had no power to appoint a

successor. It will be observed that the principle of the inherent power of a Court to make such, orders as may be necessary for the ends of justice was not invoked in that case, although it had been enunciated by Sir Barnes Peacock, C.J., in the case of *Burro Chunder Roy v. Shoorodhonee Debia* 9 W.R. 402 . In our opinion, that principle is applicable to cases of this character.

3. Section 93 specifies the circumstances under which an application for the appointment of a Common Manager may be made. Section 94 then authorises the District Judge to make an order directing the co-sharers to appoint a Common Manager, This is followed by Section 95 which authorises the District Judge, in the event of failure of the co sharers to appoint a Common Manager, to make an order for appointment. Section 98 sets out the provisions applicable to a Common Manager; one of these lays down that the Common Manager shall be removable by the order of the District Judge. The Bengal Tenancy Act, however, is silent as to what would happen if the Common Manager were removed by the District Judge in exercise of the power conferred upon him by Clause (8) of Section 98; nor is there express provision for resignation by the Common Manager of his office and the acceptance of such resignation by the District Judge. The Bengal Tenancy Act further contains no provision for another contingency which may happen, namely, the death of the Common Manager. The petitioner has argued that in each of these cases, that is, where the Common Manager has been removed or has resigned or has died, the estate automatically reverts to the co-owners, and if it is still necessary to appoint a Common Manager, the District Judge must proceed de novo u/s 93. We are of opinion that this interpretation should not be accepted and that on a reasonable construction of the Statute, we may hold that in each of these events the District Judge has inherent power to make a proper order for the appointment of a successor for the benefit of the estate. Section 99, it will be observed, authorises the District Judge to restore the management to the co-owners if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights, or if in his opinion, the ground for the appointment of the Common Manager as specified in Section 93 has ceased to exist. There is plainly no presumption that when a Common Manager has been removed or has resigned or has died, the contingency contemplated in Section 99 has happened. The view we take was indicated in *Dwarka Nath Mitra v. Bankutesh Lal* 10 C.W.N. 437, although it was not explained on what principle such a view could be supported. We hold accordingly that the principle of inherent power is applicable in such circumstances and that the order of the District Judge was made with jurisdiction.

4. Lastly, the propriety of the order has been called in question on the ground that the antecedents of the opposite party make it undesirable that he should be the Common Manager. This imputation should not be made the subject of enquiry in this Rule. The management will be earned on under the direction of the District Judge and if he is satisfied at any time that the Common Manager has not acted for the benefit of the estate, it will be open to him to make an

order for his removal u/s 98(8) of the Bengal Tenancy Act. The Rule is accordingly discharged with costs, one gold mohur.