

(1894) 02 CAL CK 0011
In the Calcutta High Court

Durga Churn Laskar and Others

APPELLANT

Vs

Hari Churn Das and Others

RESPONDENT

Date of Decision : 14-02-1894

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 106, 108

Citation : (1894) ILR (Cal) 521

Hon'ble Judges : W. Comer Petheram, C.J.; Prinsep, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J. and Prinsep, J.—This is a matter u/s 102 of the Bengal Tenancy Act in which the Revenue Officer was making a record of rights of a certain estate. The matter in dispute between the parties was as to who should be recorded as tenants of these particular lands, the plaintiff's contending that they held a half share with the defendants; the defendants, on the other hand, stating that they were the sole tenants. Before any record of rights could be prepared, it was absolutely necessary for the Revenue Officer to ascertain, in the first place, who were actual tenants of these particular lands. He proceeded u/s 107 to try the matter in dispute as therein directed, and his order in favour of the defendants was taken in appeal to the Special Judge u/s 108. The Special Judge, however, has refused to try the appeal holding that the proceedings were entirely without jurisdiction because the record of rights had not been published in the manner directed by Section 105, and therefore, in his opinion, the Revenue Officer was not competent to receive and consider any objections that might be made, and not only was the Revenue Officer not competent to make any order, but there was nothing to give him (the Special Judge) jurisdiction to try the appeal on the merits.

2. The matter in dispute, however, was dealt with u/s 106, and there is nothing u/s 108 which limits the jurisdiction of the Special Judge to deal only with matters of objection taken after publication of the record of rights. We therefore, think that the order of the Special Judge was erroneous, and we accordingly set it

aside. The appeal will be tried on the merits. The costs will abide the result.