

(1916) 08 CAL CK 0015
In the Calcutta High Court

Durga Prasanna Roy

APPELLANT

Vs

Ishan Chandra Shaha

RESPONDENT

Date of Decision : 29-08-1916

Acts Referred:

Bengal Tenancy Act, 1885 — Section 95

Citation : 42 Ind. Cas. 461

Hon'ble Judges : Sheepshanks, J;N. R. Chatterjea, J

Bench : Division Bench

Judgement

1. In the case out of which this appeal arises the plaintiff, one of the co-sharers in an estate for which a common manager had been appointed u/s 95 of the Bengal Tenancy Act, sued the common manager for accounts after the release of the estate. The Court of first instance gave him a preliminary decree for accounts, hut the lower Appellate Court has dismissed his suit, holding that the permission necessary for a suit of this nature had not been given by the District Judge, and also that the suit was not maintainable, for the reason that the accounts of the defendant had already been regularly checked and passed in the office of the District Judge. These two findings are challenged on second appeal.

2. As regards the former, the appellant relies on an order passed by the District Judge in releasing the estate, which runs: "permission to sue the common manager is granted." He contends that this permission extends to all the co-sharers, himself included. The respondent on the other hand argues that, because the proceedings in the course of which this order was made originated with a petition presented by certain individual co-sharers, the permission must be held to be restricted to them alone, and that the plaintiff not haying been one of them is not entitled to sue. In our opinion the contention of the appellant must prevail.

3. All the co-sharers were made parties to the proceeding in question; all of them had an equal interest in suing the common manager if there appeared to be grounds for so doing; the permission given is not restricted either to any

individual co-sharers or to all the co-sharers suing jointly, and anyone or more of the co-sharers were, therefore, entitled to avail themselves of it. The permission was clearly intended to remove altogether the bar which without it would have stood in the way of any suit, such as the present one, being brought against the common manager.

4. As regards the second point, the lower Appellate Court has relied on *Naba Kishore Mandal v. Atul Chandra Chatterjee* 16 Ind. Cas. 193 : 40 C. 150 : 17 C. W. N. 846. The facts, however, of that case are entirely different from those of the present one. In the former it was found that objections had been put into the accounts filed, and that after those objections had been considered and disposed of the accounts were passed by the District Judge. In the present case there is nothing to show that the accounts were passed by the District Judge, except a general statement to that effect, giving no details as to the manner in which they were passed, in the evidence of the defendant No. 1 himself. That they were not in fact passed in any sense in which the term can properly be used is made perfectly clear by the evidence of the defendant No. 1 himself, from which it appears that two gentlemen in succession were specially appointed to check them, that the former of them returned without being able to complete his check, and the latter conducted an enquiry into them for 2 or 2 1/2 months, also without any definite result, and that the defendant No. 1 was suspended for delay in submitting his budget. It is further made clear by the fact that the District Judge, having these accounts and the result of the two enquiries before him, granted the permission to sue in general terms, without excepting any-portion of the period for which accounts had been filed. We, therefore, hold that the authority above referred to has no application to the facts of the present case, and that the lower Appellate Court was mistaken in holding that the plaintiff was not entitled to Sue for a general account.

5. The result is that the appeal succeeds. The decree of the lower Appellate Court is set aside, and that of the Court of first instance is restored. Costs will abide the result.