

(1905) 06 CAL CK 0025
In the Calcutta High Court
Case No : Rule No. 1894 of 1905

Dwarka Nath Mitra

APPELLANT

Vs

Bankutesh Lal Mitra

RESPONDENT

Date of Decision : 14-06-1905

Acts Referred:

Citation : (1905) 06 CAL CK 0025

Judgement

1. This is a rule calling on the District Judge to show cause why his order under sec. 95 of the Bengal Tenancy Act, dated the 10th April 1905, should not be set aside on the ground that it was made without notice to and without, hearing the Petitioner. The facts of the case are very simple. Proceedings under sec. 93, Bengal Tenancy Act, were taken for the appointment of a manager and after the parties failed to appoint a common manager themselves, the Court proceeded under sec. 95 to appoint one. This appointment was made, and from the papers before us we gather that it was definitely accepted by one Gobendra Nath Dutt who was finally appointed on the 14th February 1905.

2. This gentleman found that he was not in a position to carry out the duties of a manager, and accordingly on the 27th March he wrote to the Judge resigning his position. The Judge seems to have accepted his resignation on the 8th April and on the same day to have given notice to all the pleaders of the various parties concerned of what had occurred. On the 10th he proceeded, after hearing the pleaders, to appoint a new manager whose appointment was subsequently affirmed on the 10th May.

3. The question we have to decide is whether, having once made an appointment under sec. 95, it was open to him to appoint a successor to the manager who was appointed. On considering the provisions of the Act relating to managers we are of opinion that when once an appointment has been made the Judge has no power to appoint a successor.

4. It is contended that such power is, by implication given under sec. 95, and that the Judge's jurisdiction is not limited under that section to appoint only one

manager. We cannot, however, read the section in this way.

5. It has also been argued before us on the facts that the appointment made on the 15th February was not complete. We can only say on the facts before us that it is not so. The rule must accordingly be made absolute. The orders of the 10th April and 10th May are set aside and it remains open to the District Judge on receiving applications under sec. 93 of the Act to proceed as he may seem fit.