
(1904) 05 CAL CK 0005

In the Calcutta High Court

Case No : Appeal from Original Decree No. 18 of 1900

Gadhadhar Bhatta

APPELLANT

Vs

Bosunta Kumar Roy and Others

RESPONDENT

Date of Decision : 10-05-1904

Acts Referred:

Citation : (1904) 05 CAL CK 0005

Judgement

1. The suit out of which this appeal arises is one brought by the Plaintiffs to recover certain sums of money payable by the Defendant on account of costs of drainage. It appears that certain drainage works have been carried out in the Plaintiffs' estate, and that they have been required by the Government to pay a sum of Rs. 16,287-3 annas as costs of these works. The Plaintiffs bring the suit alleging that the Defendant occupies 1,059 bighas, 8 cottahs, 1 chittak of the land and that he is therefore liable to reimburse the Plaintiff's in the sum of Rs. 13,093 and odd annas, with interest amounting to Rs. 2,672 and odd annas.

2. The Defendant raised various objections to the payment of this sum. But the Subordinate Judge has decreed the suit in favour of the Plaintiffs, on the ground, that the order of the Deputy Collector, dated the 27th April 1899, directing the Defendant to pay this amount to the Plaintiffs is final and binding upon the Defendant. This order was made by Babu Mohananda Gupta. Now, it has been argued before us that Babu Mohananda Gupta had no authority to make such an order, and that accordingly his order is not final and binding upon the Defendant.

3. We have examined the provisions of the Drainage Act; and we find that an order of this nature to be binding upon the Defendant must be passed by the Collector. Now the Deputy Collector was not a Collector within the definition of that term in sec. 3 of the said Act. But it is said that the Collector may delegate his power to the Deputy Collector and the Lieutenant-Governor may empower any person to do all or any of the acts to be discharged by a Collector. Now the learned pleader who appears on behalf of the Respondents has admitted that there has been no order passed by the Lieutenant-Governor under the provision

of sec. 55 of the Drainage Act; and that the order printed at page 59 of the paper-book is not such an order. He has endeavoured to show that the Collector delegated his power to Babu Mohananda Gupta, the Deputy Collector, under sec. 56 of the Act. He has not been able however to satisfy us that the Collector really did so. Some correspondence which took place between the Collector and the Commissioner has been produced. But the letter of the Collector is only to the effect that he proposes to put Babu Mohananda Gupta in charge of the Drainage Office ; and the reply of the Commissioner is to the effect that he agrees to the placing of Babu Mohananda Gupta in charge of that office. These letters do not contain any order under sec. 56 of the Act VI (B. C.) of 1880 which would have the effect of giving the Deputy Collector Babu Mohananda Gupta powers of a Collector so as to make any order under sec. 44, sub-sec. 2, final and binding upon the Defendant.

4. We must therefore set aside the decree of the Subordinate Judge in this case, and remand the case to him for decision upon the second and third issues, that is to say, "What is the amount which is payable by the Defendant to the Plaintiffs in respect of the land included in his tenure? Upon what area should the drainage charges be apportioned ? And should that amount be decreed to be paid at once or in instalments ? If, in instalments, then what should be the instalments in which the amount should be paid ? Is any and what portion of the claim barred by limitation?"

5. We therefore set aside the decree of the Subordinate Judge and remand the case to him to be disposed of according to the directions given above. The costs of this appeal will abide the result. The Appellants are entitled to the refund of Court-fee payable on the memorandum of appeal.