

(1871) 04 CAL CK 0004
In the Calcutta High Court
Case No : Rule Nisi or Motion No. 908 of 1871
In Re: Srimati Nassir Jan and Another

Date of Decision : 19-04-1871

Acts Referred:

Citation : (1871) 04 CAL CK 0004

Judgement

Jackson, J.—The applicant in this case obtained a rule calling upon the other side to show cause why the decision of the Collector of Tipperah, dated 18th May 1870, in the case of Jamiruddin Bhuia v. Hanif Bhuia, should not be set aside on the ground that it had been passed on irrelevant grounds. Cause has this day been shown, and it is alleged that this Court has no jurisdiction to interfere, partly because this is not a case in which the Court has refused jurisdiction which it should have exercised, and partly because the parties have an opportunity to set aside this decision by a regular suit. On the first point we are of opinion, looking to the decision of the Collector, that he has refused to exercise the jurisdiction which he should have exercised. He has in no way tried the question at issue between the plaintiff and the intervenor, upon which also must depend the question as between the plaintiff and the ryot defendant. Looking to the terms of section 77 of Act X of 1859, the question at issue was whether the intervenor, third party, or the plaintiff, was in receipt of rent from the ryot defendant before the institution of this suit. This issue was distinctly laid down as one of the points to be tried by the Collector; but instead of deciding it, he refused to consider or take any notice whatever of the claim of the third party, because that third party had not filed a deed of gift on which her title rested. It is evident that this is no decision whatever upon the case. It was not for the Collector to ascertain whether the intervenor's title was good or bad. The deed of gift could only be of any use in order to ascertain the validity of her title, and the mere filing of the document could not possibly be any evidence whatever in the suit. It is in fact, therefore, a direct refusal to try the case altogether. To lay down that because such and such a document was not filed, therefore her claim must be utterly bad, is no decision on the point at issue. The Collector might have as well decided the case upon any other equally irrelevant ground than that

which was before him for decision. It is possible that the intervenor might have brought a separate suit in the Civil Court to rectify this decision. But it is a question what effect that would have on the claim as between the plaintiff and the ryot defendant.

2. We think we ought not to allow this decision to stand as it is, but that the case should be sent back to the Collector, with directions to him that he will consider the evidence upon the record, and try the question as between the intervenor and the plaintiff, looking especially to the provisions of section 77, Act X of 1859, and upon his decision as between the intervenor and the plaintiff, and upon the consideration of any other fact or any other point which may arise as between the plaintiff and the defendant, he will decide the case as between the plaintiff and the ryot. Costs of this proceeding will be paid by the plaintiff. Mookerjee, J.

I concur. It is evident that in this case the Collector has refused to try the appeal or any of the issues which legitimately arise in a case u/s 77, Act X of 1859. He declines to try the case, simply on the ground that the intervenor has not filed the deed of gift under which she claims possession. The question he had to decide was, whether the intervenor "was in the actual receipt and enjoyment of the rent." He fixes the issues correctly, but declines to try them merely because the deed of gift has not been filed. If he had tried the question of possession and actual receipt of rent, his decision on that point, however wrong or improper, would perhaps have been final according to law. But as the Judge has refused to try the real issue before him, and disposed of the case on a matter wholly irrelevant to the point before him, it must be held that he has refused to exercise a jurisdiction vested in (sic)im by law. Under the powers of superintendence given to this Court by the Charter Act, I hold that we can direct Courts subordinate to this Court to do their duty, and to see that they do not avoid to try and determine cases simply because a party to the suit has not done that which he was not imperatively required to do, and which is irrelevant to the real question which the Court had to decide. This I should consider a refusal to exercise a jurisdiction which he had under the law.

1Before Mr. Justice L.S. Jackson and Justice Markby.

The 18th April 1869.

In the Matter of the Petition of Kasinath Roy Chowdhry and Others (Decree-Holders.)

Mr. R.T. Allan and Baboo Ashutosh Dhur for the petitioners.

Jackson, J. - I think this is an application that we cannot entertain. The contention advanced by Mr. Allan is one which has been often unsuccessfully made in this Court. The object of the motion is to induce us to interfere, under the 15th clause of 24 & 25 Vict., c. 104, with an order which the Deputy Collector of Howrah has made, allowing an objection and refusing to carry out the sale and execute the decree in favor of the present petitioner. It is admitted that the

Collector was competent to decide the question whether or not the sale could take place; and, in fact, he has acted in the matter at the instance of the petitioner himself. The sloe question is, (sic) the order which the Collector (sic) is one which, on the true interaction of the law, he ought to have made. I think it quite clear that the interference of this Court, in the exercise of its powers of superintendence under the 15th clause of 24 & 25 Vict., c. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or, in other words, was not competent to deal with the subject-matter, or else has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect to the subject-matter, has misconceived the law, and therefore given an erroneous order. I think the application should be refused.

Markby, J. - I am entirely of the same opinion. I think it is no ground whatever for this Court to interfere with the order of any of the Courts inferior to it, by way of motion, that that Court has put an erroneous interpretation upon a provision of law. This identical matter came before Mr. Justice Bayley and myself in the matter of the petition of Durga Charon Sirkar 2 B.L.R., A.C., 165, and there were then some cases referred to which have not been referred to in this case, in which I owned that it appeared to me that the Court had put too liberal a construction upon its powers under the 15th clause of 24 & 25 Vict., c. 104; and, in consequence of that, we considered this matter very carefully, and the conclusion which we came to then, and the conclusion which I still clearly hold is, that not only the language of this clause, but, with very few exceptions, the uniform practice of this Court has been not to interfere, except in cases of excess or refusal of jurisdiction.