

(1869) 06 CAL CK 0060

In the Calcutta High Court

Case No : Special Appeals Nos. 2618, 2621, 2622, 2623 and 2624 of 1868

Jadu Nath Das and Others

APPELLANT

Vs

Radha Mohan Naskar and Others

RESPONDENT

Date of Decision : 21-06-1869

Acts Referred:

Citation : (1869) 06 CAL CK 0060

Judgement

Loch, J.—We think that the objection taken in this appeal is of no real force. The claim was to recover the value of crops which had been distrained under colour of Act X of 1859 and carried away by the defendants. The first Court gave a decree for the plaintiff, and that order has been confirmed by the lower appellate Court. Before the lower appellate Court, the special appellant, defendant in this case, did not appeal on the facts, but on two grounds, viz., that the Revenue Court had not jurisdiction in this case; and on the point of costs.

2. The lower appellate Court held that the question of jurisdiction had been raised at so late a stage of the proceedings that it could not be enquired into. We think the Judge was wrong in refusing to dispose of the question. A special appeal has been preferred against his judgment, and though we think that the Judge should have disposed of the question, although advanced at so late a stage of the proceeding, we think the objection has not in itself any real weight. The case is one which must come either u/s 142 or section 143, Act X of 1859. Section 142 contemplates the case of persons having authority to distrain, but who distrain otherwise than according to the provisions of the Act. Section 143 contemplates the case of persons not empowered to distrain, but who under the colour of the Act do distrain.

3. It has been urged before us that section 143 contemplates the cases of those who, though they have not power to distrain, do so and proceed under the provisions of the Act; but does not embrace a case such as this, where persons not empowered to distrain do so under colour of the Act, but do not follow the provisions of the Act, i.e., where persons professing to distrain forcibly carry off

crops to which they have no right.

4. We think this is a wrong view of the cases contemplated u/s 143. It appears to us that that section not only contemplates the case of a person who professes to follow the provisions of the law, though he has no power to distrain; but also comprises the case of a person who under colour of the Act does distrain, but does not do so according to the provisions of the Act. Such persons are considered by that section as trespassers, and are liable to the penalty of trespass in addition to damages which may be awarded against them by the Revenue Court.

5. Under this view of the case we dismiss this appeal with costs. This decision governs the analogous appeals, Nos. 2618 of 1868, 2621 of 1868, 2622 of 1868, and 2624 of 1868.

Mitter, J.

I concur.