
(1907) 02 CAL CK 0016
In the Calcutta High Court

Kali Kishore Pal

APPELLANT

Vs

Gopi Mohun Roy Chowdhry

RESPONDENT

Date of Decision : 15-02-1907

Acts Referred:

Bengal Tenancy Act, 1885 — Section 105, 106

Citation : 4 Ind. Cas. 62

Hon'ble Judges : Mitra, J;Caspersz, J

Bench : Division Bench

Judgement

1. The questions raised for our decision were disposed of by us in the course of the arguments of the learned Vakil for the appellants, except the substantial one relating to the jurisdiction of the Settlement Officer and the Special Judge who decided the first appeals. We, also, overruled the preliminary objection taken on behalf of the respondents because the Settlement Officer as well as the Special Judge tried matters coming under both Section 105 and Section 106 of the Bengal Tenancy Act without discriminating them in their judgments. A second appeal may lie in a proceeding u/s 106, but there is no right of second appeal in a proceeding for settlement of rents u/s 105. If, however, such matters are not kept separate, we think, an appeal is entertainable by this Court in respect of the matters coming u/s 106.

2. The question of jurisdiction may be divided into two parts: (1) the jurisdiction of the Special Judge to entertain the first appeals, and (2) the jurisdiction of the Settlement Officer to settle rents and decide disputes.

3. The Special Judge was the District Judge of Tippera, Mr. W.B. Brown. He was duly empowered to hear appeals from the decisions of Settlement Officers in his district, whether those decisions affected lands within the district or lands outside the district. In these cases, the lands, though geographically situated in the district of Dacca, appertained to an estate recorded in the Collectorate books of Tippera and so the Settlement Officer of Tippera decided the disputes and settled rents. The learned Judge, therefore, had jurisdiction to entertain and hear the

first appeals presented to him.

4. As regards the jurisdiction of the Settlement Officer, it appears that Babu Rames Chandra Dutt was appointed on the 4th September 1903 to be Settlement Officer of Tippera, by a notification of that date. He was not then specially empowered to act as Settlement Officer in respect of lands outside the district but included in an estate recorded in the Collectorate books of the district. He, however, acted as Settlement Officer with reference to such lands without any objection. Later on, the Local Government perceived the irregularity, and, by a notification dated the 24th February 1904, empowered Babu Rames Chandra Dutt to act as Settlement Officer with reference to such lands outside the district, and the notification was given retrospective effect from the 4th September 1903, the date of his appointment as Settlement Officer of Tippera. He decided the cases under appeal on the 10th December 1904. It appears that these cases were commenced in 1902 when some other person was the Settlement Officer. In the absence of anything to the contrary, we must presume that the officer who entertained these cases in 1902 had jurisdiction to do so. The officer who decided them in 1904 has been shown to have had jurisdiction to decide them. Evidently, there was some irregularity when the intermediate proceedings were taken; but the irregularity was practically cured, retrospective effect having been given to the powers of Babu Rames Chandra Dutt. The final orders having been passed by a person competent to do so we cannot hold that his orders were without jurisdiction. The irregularity in the intermediate proceedings was not material, and did not affect the jurisdiction of the Settlement Officer who passed final orders.

5. These appeals, therefore, fail and are dismissed with costs, half gold mohur in each case.