
(1868) 09 CAL CK 0012
In the Calcutta High Court
Case No : Special Appeal No. 443 of 1868

Kalinath Roy

APPELLANT

Vs

Iswar Chandra Ghosal

RESPONDENT

Date of Decision : 01-09-1868

Acts Referred:

Citation : (1868) 09 CAL CK 0012

Judgement

Sir Barnes Peacock, Kt., C.J.—We are of opinion that in this case the intervenor had no right to insist upon being made a defendant, and that the Court would have been wrong if it had made him a defendant. The case did not fall within section 77 of Act X of 1859, and even if section 73, Act VIII of 1859, extended to proceedings under Act X, the intervenor had no interest which entitled him to become a defendant, or would have justified the Court in making him one. In point of fact, the intervenor never was made a defendant in this case. The decree for enhanced rent was passed against the original defendant, and, therefore, the question really does not arise in this case.

2. The decree of the lower Appellate Court will be affirmed with costs.

1

If in actions for rent a third claimant appear, he is to be made a party to the suit.

Sec. 77:--When in any suit between a landholder and a ryot or under-tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the ryot or under-tenant is disputed and such right is claimed by or on behalf of a third person, on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the commencement of the suit, such third person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by such third person shall be enquired into and the suit shall be decided according to the result of such enquiry. Provided always, that the decision of the Collector shall not affect the right of either party, who

may have a legal title to the rent of such land or tenure, to establish his title by suit in the Civil Court, if instituted within one year, from the date of the decision.

Proviso.

2

Collector may cause local enquiry to be made.

Sec. 73:--The Collector may at any stage of a case cause a local enquiry, and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot, and make such local enquiry in person. The provisions of the law for the time being in force relative to local enquiries by Ameens or Commissioners under orders of the Civil Courts shall apply to any local enquiry made by any officer under this Section, and so far as they are applicable, to enquiries made by the Collector in person. In the latter case, the Collector, after completing the enquiry shall record on the proceedings such observations as appear to him appropriate, and the observations so recorded shall be received as evidence in the suit.