
(1894) 06 CAL CK 0002
In the Calcutta High Court

Kanta Pershad Hazaree

APPELLANT

Vs

Irshad Ali Chowdhry

RESPONDENT

Date of Decision : 27-06-1894

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106, 108

Citation : (1894) ILR (Cal) 935

Hon'ble Judges : Rampini, J; Hill, J

Bench : Division Bench

Judgement

Hill and Rampini, JJ.—This is a second appeal against an order of the Special Judge of Chittagong, who has rejected an appeal against an order of the Assistant Settlement Officer of Chittagong on the ground that no appeal lies to him. On behalf of - the appellant it is contended that the order of the Assistant Settlement Officer was passed under the provisions of the Bengal Tenancy Act, that it was ultra vires, being a decision as to a boundary dispute between neighbouring proprietors of land, and that, therefore, it should have been set aside by the Special Judge.

2. A preliminary objection to the hearing of this second appeal has been urged on the ground that no appeal lies to this Court. We are of opinion that this contention must prevail. A second appeal only lies to this Court u/s 108 (3) against a decision of the Special Judge in a case u/s 106, and it is clear that the decision of the Special Judge in this case, which it is sought to set aside, is not a decision u/s 106, because it is not a decision about the correctness of an entry in the record of rights.

3. Then it is said that we should regard this appeal as an application u/s 622 of the Civil Procedure Code. But we are unable to do so, because we do not think that the Special Judge has refrained from exercising any jurisdiction which he ought to have exercised. The Settlement Officer's order, which the Special Judge declined to interfere with, was, we think, passed by him under his powers as a Survey Officer with which he is vested u/s 189 (b) and Rule 1, Chapter VI of the

Government Rules made under the Tenancy Act. He himself says in an order, dated 23rd September 1892, which is to be found on the record that his order is one under Part V of the Bengal Survey Act (Bengal Act V of 1875), and Section 40* of that Act, which is the first section of Part V, authorizes him to dispose of such a boundary dispute as he has decided in this case. We, therefore, do not think that he was dealing with the case under the Tenancy Act, and accordingly the decision of the Special Judge now appealed against is right.

4. Sir Griffith Evans relies on the fact that the Settlement Officer has described himself as such and not as Survey officer, and also on Rule 33, page 8 of the Board's Survey Manual, in which it is laid down that, u/s 106, a Settlement Officer may decide disputes between two disputing landlords, unless the estates of one of them should lie without the limits of the area under settlement, which is not the case, it is said, in the present instance.

5. But this rule has not the force of law, and the Settlement Officer himself says his proceeding was one under Part V of the Survey Act. It is a well known rule that, when a judicial officer has powers to do certain things, it is to be presumed that, when he does these things, he was acting under these powers, though he may not expressly say so.

6. We, therefore, see no reason for interfering in this case. As the Special Judge points out, the appellant has still the remedy of a regular civil suit open to him.

7. We dismiss the appeal with costs.

* Procedure in case of disputes as to boundary.

[Section 40. If it shall come to the notice of the Collector in the course of a survey under this Act that a dispute exists as to any boundary which should be surveyed, the Collector after holding such enquiry as he may deem necessary, may determine such boundary as hereinafter provided.]