

(1916) 07 CAL CK 0030
In the Calcutta High Court

Kumar Soradindu Roy and Another

APPELLANT

Vs

Girish Mohini Devi Chowdhurani and Others

RESPONDENT

Date of Decision : 31-07-1916

Acts Referred:

Citation : 36 Ind. Cas. 448

Hon'ble Judges : Richardson, J; N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. The present case comes before us in our revisional jurisdiction, and the main ground on which exception is taken by the petitioner to the order of the learned District Judge is that there is no dispute between the co-owners of this estate such as is contemplated by Section 93 of the Bengal Tenancy Act.

2. It is clear that the District Judge bestowed much pains upon the case. He has set out in his judgment in some detail the history of the relations between the co owners during the past quarter of a century or so. It is a history of quarrels and consequent mismanagement, which must have resulted in considerable loss to the co-owners individually and collectively. Towards the end of his judgment the District Judge states his conclusion as follows:

On a careful consideration of the evidence in the case, I am clearly of opinion that there are serious disputes between the co-owners of the estate No. 204 as to the management thereof. The result of their disputes, as I have stated before, has been that collection of rents has at times come to a standstill, that no surveys and settlements of newly formed lands have been systematically and periodically made, (that) the lands which belonged to the estate have, in consequence of there being no surveys and settlements, been either lying waste or in the enjoyment of persons who do not pay any rent for them, causing loss of thousands of rupees to the owners of the estate, and that lands belonging to the estate have been taken possession of by neighbouring zemindars and no attempts made to get them back with the help of the Law Courts. These are certainly injuries to private rights and injuries of grave and substantial nature.

There can be no doubt that these injuries are the result of mismanagement, which again is due to the disputes existing between the co-owners of the estate.

3. It cannot be said that in arriving at these very positive findings the learned District Judge overlooked the requirements of Section 93. On the contrary his language shows that he had the Section before him, and the order which he made, was made with a view to the preservation of the estate as a whole.

4. The disputes which have occurred have, been for the most part disputes between the opposite parties themselves. The application for the appointment of a Common Manager was made by some of the latter in February 1914. It is hardly disputed that the dissensions between the opposite parties continued till that date. It is said, however, that subsequently the opposite parties were able to agree so far as to appoint a Common Superintendent, whose power was limited to the collection of rents of their shares. This, it is said, is absolute proof that the dissensions had come to an end. It is not difficult to suggest an answer to this argument! The appointment of the Superintendent was made after the initiation of proceedings u/s 93 and the District Judge may well have thought that the fact that there were proceedings pending before him, had led the opposite parties to come to some temporary arrangement and that the quarrels and disputes among them had not been permanently composed but remained, dormant it may be, but still ready to break out afresh on the slightest occasion.

5. Then another objection was taken that the District Judge adverts to some dispute between the opposite parties and the petitioner as to the boundaries between the common estate No. 204 and estate No. 205 of which the petitioner is the sole proprietor, the two estates being contiguous. It is suggested that the position of the Manager may become difficult in the event of the boundary dispute leading to litigation. In such litigation, it is said, the petitioner will be both plaintiff and defendant. He will be represented on one side of the record by the Common Manager and on the other side he will appear in his own name. If a Common Manager be appointed and the difficulty arises, the Courts will have to deal with it. But the difficulty need not necessarily arise. There is nothing to prevent the District Judge from directing that his previous sanction must be obtained to the institution of a suit by the Common Manager against the petitioner. Moreover, the Common Manager may find it possible to arrive at a solution of the boundary dispute without resort to litigation. The fact that there is this boundary dispute, the extent of the dispute, and its relative importance as compared with other disputes between the co-owners are circumstances which might well have a bearing on the exercise by the District Judge of his discretion to appoint or not to appoint a Common Manager. In the circumstances, however, we are not prepared to interfere on this ground.

6. There remain two other points for consideration.

7. The first of these points turns on the meaning of the word "estate". Section 93 speaks of a dispute between co-owners of an estate". In Section 3, Clause (1) of

the Bengal Tenancy Act, an estate is defined as land included under one entry in any of the general registers of revenue-paying lands prepared and maintained under the law for the time being in force by the Collector of the District.

8. It is argued for the petitioner that inasmuch as he has opened a separate account in respect of his share in the Collectorate, that share is no longer included in one entry with the aggregate share of the opposite parties. The contention cannot be accepted. The estate is still a single estate for revenue purposes, though separate accounts have been opened in respect of it. It is responsible ultimately as a whole for the entire revenue assessed upon it. It still bears a single touzi number and is included, within the meaning of the definition in the interpretation clause, under one entry in the Collector's books, though there may be sub-entries relating to the opening of the separate accounts.

9. The second point is that a dispute between the opposite parties is not a dispute between "co-owners of an estate" as to the management of the estate, but a dispute between the co-owners of a part of an estate as to the management of part of an estate. But the Act does not say that the dispute must be between all-the co-owners of an estate. It speaks of a "dispute between co-owners." Nor does the Act say that the dispute as to management must be a dispute as to the management of all and every part of the estate. What is required is a "dispute between co-owners "as to the management of the estate, that is, a dispute relating to or affecting the management of the estate. A dispute between the opposite parties, who own the greater part of the estate, even if the dispute the only as to the management of their share, is sufficient. Similarly a dispute as to the terms on which or the person with whom a particular holding or a number of holdings should be settled, is a dispute as to the management of the estate, though only a part of the estate is involved.

10. In the case of *Indu Bhusan Bose v. Annapurna Mitra* 6 C.L.J. 216 it was held that a District Judge had no authority to appoint a Common Manager of part of an estate. It is unnecessary to consider whether we should have come to the same decision in the particular circumstances of that case, but the distinction between the point then taken and the present point is evident. A manager of part of an estate is not a manager of the estate, because the part does not include the whole. A dispute as to the management of part of an estate is a dispute as to or relating to the management of the estate, because the whole includes the part.

11. The conclusion at which we have arrived, on these two points is in accord with the opinion expressed in a previous case relating to the same estate. *Kumar Saradindu Roy v. Collector of Rangpur* 11 C.W.N. 1143.

12. For the reasons indicated the Rule must be discharged with costs. We assess the hearing-fee at three gold mohurs.

13. We may add that it is, in our opinion, desirable that this estate should be partitioned between the petitioner and the opposite parties as soon as this can be conveniently done. When the Revenue Authorities are prepared to undertake

a partition, we trust that the opposite parties will place no obstacle in their way.