

(1886) 02 CAL CK 0011
In the Calcutta High Court

Lalla Chedi Lal and Others

APPELLANT

Vs

Ramdhuni Gope and Others

RESPONDENT

Date of Decision : 11-02-1886

Acts Referred:

Bengal Civil Courts Act, 1871 — Section 22

Citation : (1886) ILR (Cal) 57

Hon'ble Judges : Norris, J; Mitter, J

Bench : Division Bench

Judgement

Wilson and Norris, JJ.—We agree with the District Judge that the appeal in this case lay to him and not to this Court, but we would guard ourselves from being understood to say that we concur in all his reasons. It appears to us that the decision of this question depends upon Section 22 of Act VI of 1871, which says: "Appeals from the decrees and orders of Subordinate Judges and Munsifs shall, when such appeals are Allowed by law, lie to the District Judge, except where the amount or value of the subject-matter in dispute exceeds five thousand rupees, in which case the appeal shall be to the High Court."

2. It is quite clear that the value of the subject-matter in dispute is the capitalized value of the excess rents, which, after the measurement applied for had been effected, the appellant before us expected that he would recover. Of this value there is no evidence on the record. That being so, under the first part of Section 22 the appeal lay to the District Judge.

3. Upon the merits we also agree with the District Judge that the order of the Court of First Instance is erroneous: The appellant before us stated in his petition: "Sixteen annas of mouzah Ahiari (main and hamlet), pergunnah Bherwara and the tolas are the right of your petitioners and their proceeds are Rs. 7,000 and approximate area 3,500 bighas."

It is a long time ago that the said mouzah with the tolas are not measured, and in the said mouzah and tolas thousands of bighas of land were waste and

pasturage for cattle, and those lands have come under cultivation, and most of the tenants, besides their jotes, have gradually brought those waste lands in their possession along with their former jotes; but your petitioners do not know which tenants have cultivated how much land and what kind of land is in the jote of each tenant.

4. That is the ground upon which this application was made for measurement u/s 38, and the ground may be put shortly thus: The waste lands of the estate having been brought under cultivation by various ryots, and the landlord not having been able to ascertain which of the ryots have appropriated these lands as part of his jote, an application was made u/s 38 for the measurement of the whole estate. We think that such an application as this does not come u/s 38 of the old Rent Act, which runs as follows:

If the proprietor of an estate or tenure, or other person entitled to receive the rents of an estate or tenure, is unable to measure the lands comprised in such estate or tenure, or any part thereof, by reason that he cannot ascertain who are the persons liable to pay rent in respect of the lands, or any part of the lands comprised therein, such proprietor or other person may apply to the Court which would have had jurisdiction in case a suit had been brought for the recovery of such lands, and such Court thereupon, and on the necessary costs being deposited therein by the applicant shall order such lands to be measured.... " It is quite clear that two conditions are necessary, viz., that the lands are known, but the tenants are unknown. But according to the averments in the petition the tenants are known, but the lands are unknown. Section 38, therefore, cannot apply. We also agree with the District Judge that even supposing that Section 38 does apply, still before any proceeding could be initiated under that section, it was necessary for the petitioner to establish by evidence those conditions upon the establishment of which the Court could proceed to order the measurement u/s 38 of the old Rent Act. We dismiss the appeal with costs.