
(1889) 09 CAL CK 0002
In the Calcutta High Court

Palukdhari Pandey and Others

APPELLANT

Vs

Lala Kirut Narain and Another

RESPONDENT

Date of Decision : 04-09-1889

Acts Referred:

Bengal Tenancy Act, 1885 — Section 104(2)

Citation : (1890) ILR (Cal) 326

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

Bench : Division Bench

Judgement

Ghose and Rampini, JJ.—The landlords now again appeal to this Court, urging (1) that Mr. Brett, as Special Judge, has u/s 108 (1) no power to do otherwise than hear appeals from the Revenue Officers' orders; that as District Judge he has no power to take any steps in the case; and that, therefore, his proceedings now appealed against are ultra vires and without jurisdiction: (2) that Sections 565 and 568, Civil Procedure Code, have no application to the case: and (3) that he has flow settled the rents of several raiyats who were not parties to the original proceedings before Mr. Collins. On the other hand, a preliminary objection is urged on behalf of the respondents to the effect that no appeal against the order of Mr. Brett passed on the 10th January last lies to this Court, inasmuch as u/s 108 (3) a second appeal lies to the High Court only against decisions passed by a Special Judge under the provisions of Section 106 of Act VIII of 1885, and that the decision of Mr. Brett now appealed against was not passed in a case under that section. We think after some consideration that this preliminary objection must prevail. It seems clear that, according to Chapter X of the Tenancy Act, a proceeding u/s 104 (2) for the settlement of rent is a different thing from a proceeding u/s 106 with regard to a dispute as to the correctness of any of the particulars required to be entered in the record of rights, and it is only when such a dispute arises, and is disposed of by a Settlement Officer, that a second appeal lies to the High Court. The words "not being an entry of a rent settled under this chapter," occurring in Section 106, read in connection with Section 108 (3), clearly indicate that this Court has no authority to entertain a second appeal in

matters relating to the settlement of rent; and from the proviso to Section 108, it appears that it is only when a dispute arises regarding any of the particulars entered in the record of rights, and when on second appeal the High Court has altered the decision of the Special Judge in respect thereto, that they have the power to exercise any jurisdiction as to the settlement of rent. In the present case no point is raised before us as to any of the matters mentioned in the proviso to Section 108, and it follows that no second appeal lies to this Court against the orders of the Special Judge; and we find that the same conclusion has already been arrived at by another Division Bench of this Court in the case of *Shewbarat Koer v. Nirpat Roy* ILR Cal. 596, decided by Tottenham and Gordon, JJ., on the 15th May 1889. It remains to be considered whether we can or should interfere, as we have been asked to do, with the order of Mr. Brett, now appealed against under the powers vested in us by Section 622, Civil Procedure Code. After consideration, we think we should not do so, for, though it has now come to our notice that the Government Notification of November 4th, 1885, ordering a cadastral survey in part of the Mozufferpore district has been withdrawn, except with regard to certain specified villages (see Government Notification of December 14th, 1886, published in the Calcutta Gazette of December 15th, 1886, Part I, p. 1308), amongst which do not occur the names of the villages in which the present applicants are raiyats, yet it seems doubtful if we have authority to interfere under the provisions of Section 622 with Mr. Brett's orders. In the case above cited, it has been held that the Court of a Special Judge, when that officer makes an order regarding a settlement of rent, is not a Court subordinate to this Court. It may, however, be contended that it is a Court subject to our appellate jurisdiction within the purview of Section 15 of the Charter Act, and that therefore we have authority to interfere. But he that as it may, as the present case is clearly one regarding the settlement of rent, and not one in which there is any dispute as to an entry in the record of rights (so that we could not now pass any order in it settling the applicant's rents), and seeing that no appeal lay to this Court when the order of the Special Judge was set aside and the case remanded for re-trial on the 6th January 1888, it would seem to us to be one in which the interference of this Court u/s 622, Civil Procedure Code, is not desirable. We accordingly abstain from passing any orders with regard to it under the provisions of that section. We think it proper to mention that when the case was remanded on the 6th January 1888, no question as to whether a second appeal lay against the order of the Special Judge in this case was raised before this Court.

2. For all these reasons this appeal will be dismissed, but in the circumstances without costs.