

(1911) 11 CAL CK 0025
In the Calcutta High Court

Raja Raghubir Sahi

APPELLANT

Vs

Maharajah Sri Protap Udoy Nath Sahi Deo

RESPONDENT

Date of Decision : 29-11-1911

Acts Referred:

Bengal Tenancy Act, 1885 — Section 108
Chotanagpur Tenancy Act, 1908 — Section 87
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : 13 Ind. Cas. 193

Hon'ble Judges : Stephen, J;Coxe, J

Bench : Division Bench

Judgement

Stephen, J.

S.A. No. 2485 of 1911

1. This matter comes before us on appeal and also on a Rule. The appeal was from a decree of the Judicial Commissioner of Chota Nagpur sitting on appeal from an order u/s 87 of the Chota Nagpur Tenancy Act.

2. A preliminary objection is taken by the respondent that no second appeal lies in this case, and this contention, we think, must succeed. Sub-section (2) of Section 87 of the Act enacts that an appeal shall lie in the prescribed manner and to the prescribed officer from decisions passed under Sub-section (1). By an order of the Local Government, which has power to act in this matter, the prescribed officer is the Judicial Commissioner, and it is argued that an appeal lying to him from a decision of a Revenue officer there can be no second appeal. It is admitted that the provisions of Section 100, Civil Procedure Code, must be excluded either expressly or by implication. There is no express exclusion in this Act, but we think, on looking at the frame-work of this Act, that it is intended that no second appeal should lie to this Court. An appeal is provided for, as we have said, in Sub-section (2) of Section 87, and if there is to be a further appeal we must then look to the provisions of Section 224 of the Act, which lays down that "A second appeal shall lie to the High Court, under Chapter XLII of the Code

of Civil Procedure, from an appellate decree passed by the Judicial Commissioner under this Chapter, or from any order passed by him on appeal u/s 215, Sub-section (3)". We are of opinion that Section 87 has been deliberately excluded from its scope, we are led further to this conclusion by a consideration of the provisions of the Bengal Tenancy Act from which this Act has been very closely adopted. Reading Section 87 with Section 108 of the Bengal Tenancy Act, it seems to us that it is by implication provided that there shall be no second appeal in cases arising under that section.

2. We, therefore, hold that there is no second appeal in this case.

3. The appeal is dismissed with costs.

Coxe, J.

4. I agree. It appears to me that Clause (2) Section 87, read with Section 264, Sub-section (1), Clause (8) is tantamount to an express provision of law within the meaning of Section 100 of the Code of Civil Procedure, that these appeals should be heard by the prescribed officers and should not be heard by officers other than those. I only desire to state that in the case of Mohunt Padmalav Ramanuja Das v. Lukshmi Rani 12 C.W.N.S. to which we have been referred, there is nothing that in any way limits the scope of Section 106 of the Bengal Tenancy Act in so far as it relates to suits between landlord and tenant.

5. The appeal is dismissed with costs.

Rule No. 5356

5. We have then to consider this Rule. The Rule was on the opposite party to show cause why the decision complained of should not be set aside. The decision arrived at was that the petitioner was a tenant for life and not possessed of a tenancy of a hereditary nature. It is argued on his behalf that the judicial Commissioner acted without jurisdiction in deciding this question. u/s 81, however, It is the duty of the Settlement officer u/s 87 to decide the matters contained in Section 81, paragraph (b).IT, therefore, was clearly his duty to decide the question which he has decided and we cannot see that there is any room for the contention that he has acted without jurisdiction .

6. The Rule is discharged without Costs.