

(1889) 11 CAL CK 0001
In the Calcutta High Court

Seogobind Sahoo and Others

APPELLANT

Vs

Deoki Singh and Another

RESPONDENT

Date of Decision : 19-11-1889

Acts Referred:

Bengal Tenancy Act, 1885 — Section 158

Citation : (1890) ILR (Cal) 277

Hon'ble Judges : W. Comer Petheram, C.J.; Norris, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—This is an appeal from an order of the District Judge of Mozufferpore, reversing an order of the Munsif with reference to the measurement of some land u/s 158 of the Bengal Tenancy Act, and this is an appeal by the ryots.

2. The proceedings in this case were initiated by the landlords under that section for the purpose of having the situation, quantity and boundaries of the land held by certain ryots ascertained and determined, and these proceedings were initiated in the Court of the Munsif. The Munsif was of opinion that it was necessary that a local enquiry should take place, and accordingly, under the powers of Sub-section 2 of that section, which embodied Chap. XXV of the Code of Civil Procedure, an Ameen was appointed for the purpose of holding such an enquiry.

3. The Ameen went to the spot, and he found when he arrived there that the real dispute was a question of the boundaries of the tenants' holding. The tenants claimed to hold a certain number of plots as their holding; the landlords said they did not hold all those plots, but a smaller number of plots; and that being so, it is apparent that the question was, whether the true holding of the tenants was included within the larger boundaries alleged by them, which included the whole of the plots, or within the smaller boundaries alleged by the landlords, which included the smaller number of plots.

4. There was apparently no dispute as to the number of bighas which the tenants held, and that was so, because there had been prior litigation between the parties, and in that litigation these tenants had been found to be entitled to a certain number of bighas, and consequently what the parties had to do was to get these given number of bighas included in the area which was claimed to be the area of the tenancy.

5. The tenants said that a bigha in this part of the country is larger than a bigha in any other part of the country, and therefore includes more land than the landlords say they are entitled to.

6. The landlords, on the other hand, said, it is the ordinary bigha, and if you measure within the boundaries, we allege you will find the number of bighas which you are entitled to, and which you say you are entitled to and that was the real dispute between the parties.

7. The Ameen then proceeded to take evidence under Chapter XXV of the Code, and, among other evidence, he took evidence bearing on the question of what was the customary bigha in that part of the country; and the real ground of this appeal, and, in fact, the only ground of the appeal, is that, under the provisions of Section 158 of the Bengal Tenancy Act, neither the Munsif nor the Judge had any power to determine that question, and consequently the Ameen had no power to take evidence on that question, because that question did not arise in that form of proceeding. As it seems to me, to hold that this question did not arise under these circumstances, is to hold that Section 158 of the Bengal Tenancy Act has no operation, because it is clear that where the question is a question of boundary, and where the question of boundary depends to a great extent upon a known or admitted area, the whole question must depend upon what is the customary bigha which is included or which represents that area, and therefore the contention seems to me to make this section absolutely inoperative; for whatever the question is, whether it is a question of quantity or a question of boundary, or whatever it is, it is enough for the parties objecting to say at the beginning of the enquiry, "we say that a bigha in this part of the country is not what you say it is," and thereupon the enquiry must come to an end, because, according to this argument, this question, however material it may be, and however much it may have been the object of Section 158 that it should be enquired into, does not arise and ought not to be enquired into; and that if it cannot be decided in this enquiry, it cannot be decided in any other. That is to reduce the question to a kind of absurdity, because it cannot be that the Legislature made an enactment of this kind leaving out one of the powers which was absolutely essential to the carrying of it out.

8. Under these circumstances, it seems to me that the Ameen was right in taking this evidence, and that the Munsif and the District Judge were right in taking that evidence into consideration.

9. The only other question is a question of fact, and the argument is, that the

conclusion at which the Judge has arrived on the subject is wrong, because his reasoning is illogical. But when you come to ascertain what the real question is, it seems to me that his reasoning is highly logical; because when you once get at the fact that the true question was not a question of area but a question of boundary, then it is obvious that the question depends to a great extent upon the reasoning which the learned Judge has used in this case.

10. In my opinion then this evidence was properly taken, and there is no ground for supposing that the conclusion at which the Judge arrived, upon a consideration of that evidence was wrong, and I think that this appeal must be dismissed with costs.