

(1889) 05 CAL CK 0001
In the Calcutta High Court

Shewbarat Koer

APPELLANT

Vs

Nirpat Roy and Others

RESPONDENT

Date of Decision : 15-05-1889

Acts Referred:

Bengal Tenancy Act, 1885 — Section 106, 108(6)
Civil Procedure Code, 1882 — Section 108, 622

Citation : (1889) ILR (Cal) 596

Hon'ble Judges : Tottenham, J;Gordon, J

Bench : Division Bench

Judgement

Tottenham and Gordon, JJ.—It appears to us that in this case the High Court has no jurisdiction either to entertain a second appeal, or to interfere with the order of the District Judge u/s 622 of the Code of Civil Procedure.

2. The matter in dispute is an entry in the record of rights and of rents settled, made under Chapter X of the Bengal Tenancy Act. The settlement appears to have been made ex parte, the Zemindar not having been present. Subsequently the Zemindar objected to the entry, and sought to have it corrected. The Revenue Officer declined to re-open the matter, and the Zemindar appealed against his order (and apparently she had a right to do so) to the District Judge, who is Special Judge under the Tenancy Act. The District Judge held that the only remedy which the Zemindar had was to apply to set aside the ex parte order u/s 108* of the Code of Civil Procedure, and he dismissed the appeal. The Zemindar has preferred a second appeal to this Court.

3. It has been pointed out to us by the respondents' Vakil that we have no jurisdiction to entertain this appeal. It appears that the only cases in which the High Court has jurisdiction to entertain appeals from the decisions of a Special Judge are cases u/s 106. Clause 3 of Section 108 of the Bent Act gives the High Court jurisdiction to hear appeals in such cases as if the Special Judge were a Court subordinate to the High Court within the meaning of Chapter XLII of the Code of Civil Procedure. Section 106 provides for the hearing and decision of

disputes regarding the record of rights by a Revenue Officer; but that section excludes from a Revenue Officer's consideration disputes regarding the entry of rent settled under the chapter. This entry, therefore, is not such as can be decided or entertained u/s 106; and therefore it appears to us that the High Court has no jurisdiction to hear an appeal from an order of a Special Judge in regard to settlement of rent. In respect of that entry a Special Judge is not a Court subordinate to the High Court; and that being so, we have neither appellate jurisdiction over him, nor any authority u/s 622 of the Code to interfere with his order.

4. The appeal must, therefore, be dismissed with costs.

* Stating aside decree ex-parte against defendant.

[Section 108: In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was made for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court of otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.]