
(1895) 03 CAL CK 0003
In the Calcutta High Court

Shib Chunder Mukerjee and Another

APPELLANT

Vs

Anand Lal Paria and Others

RESPONDENT

Date of Decision : 04-03-1895

Acts Referred:

Citation : (1895) ILR (Cal) 477

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

Bench : Division Bench

Judgement

Rampini, J.—This is an appeal against an order of the Special Judge of Midnapore, affirming an order of a Settlement Officer made in the course of a settlement under Chapter X of the Bengal Tenancy Act. The plaintiffs and the defendants disputed as to the length of the rod to be used in the measurement. The plaintiffs contended that it should be a rod of 18 inches, while the defendants said it should be one of 20 inches. Both the lower Courts have found in favour of the plaintiffs, and the defendants appeal to this Court.

2. A preliminary objection has been raised that no second appeal lies to this Court, and I think this objection must prevail. It is evident that a second appeal only lies to this Court from an order passed u/s 106 (not being an entry of a rent settled), and the decision of the Settlement Officer in this case was not such a decision for the sufficient reason that no record of rights has yet been prepared or published, and, therefore, there can have been no dispute and no decision of a dispute regarding the correctness of an entry in it. This has already been held in the case of Gopi Nath Masant v. Adoita Naik ILR Cal. 776, in which it has been pointed out that, while u/s 108, Clause (2), an appeal lies to the Special Judge from any decision of a revenue officer "under this chapter" (i.e., Chapter X), it is under Sub-section (3) only in the case of the decision being one u/s 106, and being one of a dispute with regard to an entry other than an entry of rent settled, that a second appeal lies to the High Court.

3. Against this it has been urged (1) that the decision of the Settlement Officer must be one u/s 106, because there is no other section of Chapter X under which

it can come; and (2) that, if it does not do so, it cannot come under any section of Chapter X at all, and then the Special Judge can have had? no jurisdiction to hear an appeal from the Settlement Officer's decision in the case.

4. But neither of these reasons seems to me to have any weight; whether or not the Settlement Officer's decision can be referred to any section of Chapter X other than Section 106, it does not follow, I think, that for that reason, it must have been one u/s 106. It may not have been one under Chapter X at all; whether this be so or not, I am not called upon in this case to decide. It is sufficient, in my opinion, to hold that, for the reason already stated, it is not one u/s 106.

5. Then it is also surely unnecessary for us to come to any conclusion whether an appeal lay to the Special Judge or not, This point is not before us for decision. Anything we could say on this point would be an obiter dictum. It is sufficient for us to hold, as I think, on the authority of the ruling above referred to, and the provisions of Section 108, el. (3), must be held, that in this case no second appeal lies to this Court.

6. I would, therefore, reject this appeal with costs.

Ghose, J.

7. I concur with my learned colleague in holding that no second appeal lies to this Court against the decision of the Special Judge at this stage of the proceedings. Beading Sections 105 to 108 together, it would seem that it is only after an entry has been made, and a draft of the record prepared by the revenue officer has been published, and the objection, if any, that may be" made to an entry (not being an entry of a rent settled under Chapter X) has boon decided u/ s 106, that a second appeal lies to the High Court under the provisions of Clause (3) of Section 108 :