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Court : Kolkata

Decided On : Jul-30-1923

Reported in : AIR1924Cal214,80Ind.Cas.654

Judge : Newbould and ;Suhrawardy, JJ.

Appellant : Basanta Kumar Chakravarti

Respondent : Ashutosh Chakravarti and ors.

Judgement :

1. This Rule has been granted on the application of Basanta Kumar Chakravarti who is a co-sharer in certain property and was for merly appointed common manager under Section 93 of the Bengal Tenancy Act. The learned District Judge has on the objection of other co-sharers removed the Petitioner from the post of the common manager and appointed one Brojendra Lal Sen as the common manager of the estate.

2. The Rule was directed against three orders passed by the learned District Judge. At the hearing of this Rule the only point pressed is that the learned District Judge by his order of the 25th November, 1922, rejected an application objecting to the appointment of the new common manager on the ground that he could not be appointed to the properties, since some of the properties did not include the whole estate or tenure of which the Chakravartis were the co-sharers. We think that in dealing with this application the learned District Judge proceeded on a

wrong principle. He appears to have held that as the former common manager had been appointed to these properties, no objection can be taken to the new common manager being appointed to the same properties. But if the original order was illegal in this respect, this would not validate the second order. The attention of the District Judge is drawn to the decisions of this Court in the cases of *Indu Bhusan Bose v. Annapurna Mitra* (1906) 6 C.L.J. 216 and *Mohini Lal Pakrasi v. Nagendm Nath Pakrasi* (1919) 30 C.L.J. 261 in which it was held that the appointment of a common manager must be to the entire estate and not to a portion thereof.

3. We set aside the order of the learned District Judge dated 24th November, 1922, so far as it rejects the petition, dated 24th October 1922 objecting to the appointment of the common manager on the ground that the common manager has not been appointed to the whole estate or estates or tenures, and we direct that the learned District Judge do re-consider that application and pass orders thereon according to law.

4. We make no order as to costs in this Rule.

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