

Rakhal Patak and anr. Vs. Kumar Jyoti Proshad Singh Deo and ors.

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Court : Kolkata

Decided On : Mar-08-1909

Reported in : 4Ind.Cas.536

Judge : Doss and ;Richardson, JJ.

Appellant : Rakhal Patak and anr.

Respondent : Kumar Jyoti Proshad Singh Deo and ors.

Judgement :

1. This is a rule calling on the opposite party to show cause why the judgment of the Deputy Commissioner of Manbhum, dated the 13th August 1908, should not be set aside or varied.

2. The Petitioner brought a suit for rent in the Court of the Deputy Collector of Raghunathpur. The opposite party intervened under Section 77 of Act X of 1859 on the ground that he had actually and in good faith received and enjoyed the rent before, and up to the commencement of the suit. The Deputy Collector held that the intervenor had failed to substantiate his ground and accordingly gave a decree to the plaintiff. The intervenor appealed to the Deputy Commissioner exercising jurisdiction as Collector under Act X of 1859 and the latter officer has reversed the judgment and dismissed the suit.

3. The point for decision in this case is whether an appeal lay from the judgment of the Deputy Collector, dated the 20th June 1908, to the Collector or to the Court of

the Zillah Judge. That depends upon the question whether, having regard to the provisions of Sections 153, 155 and 160 of Act X of 1859, any question relating to title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment in the sense that if no appeal is preferred from that judgment, it is final as between the parties.

4. We do not think that the Deputy Collector has by his judgment determined any question of title between the parties in the sense in which that word is used in Section 153. The Deputy Collector was exercising jurisdiction under Section 77 of the Act and under that section his jurisdiction, and the scope of the inquiry he is directed to make, was of a very limited character. All that he had to determine was, which of the two parties, the plaintiff or the intervenor, was in actual receipt and enjoyment of the rent; and if the Deputy Collector decided any question of title, in our opinion, he did so only incidentally for the purpose of deciding the main question in the suit, namely as to the actual receipt and enjoyment of the rent by either of the parties. That being so, we think that the appeal from the judgment of the Deputy Collector lay to the Collector and not to the District Judge; but assuming that the appeal lay to the District Judge, we think that under the circumstances of this case we ought not to interfere with the judgment.

5. The Rule is accordingly discharged.

6. This judgment governs the other Rules Nos. 3748 to 3751.

7. We assess costs at one gold mohur.

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