

**(1914) 02 CAL CK 0001**

**Calcutta High Court**

**Case No:** Rules Nos. 110 to 117 of 1913

Uma Charan Mondol

APPELLANT

Vs

Midnapur Zemindary Co., Ltd.

RESPONDENT

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**Date of Decision:** Feb. 20, 1914

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### **Judgement**

1. This Rule raises a question of first impression as to the jurisdiction of this Court to exercise the power of superintendence it possesses under sec. 15 of the Indian High Courts Act 1861, in relation to a proceeding for settlement of fair rents before a Revenue Officer under sec. 85 of the Chota Nagpur Tenancy Act 1908. The circumstances under which the question has been raised for decision may be briefly narrated. The Opposite Party commenced a suit for recovery of possession of lands in the occupation of the Petitioners as under-tenure-holders on the allegation that they were purchasers of the superior tenure at a sale for arrears of rent, and as such were entitled to avoid all under-tenures granted after the creation of the tenure. The District Judge has held that the Plaintiffs are not entitled to avoid the under-tenures, but he has given them a declaration that they are entitled to enhance the rent payable. The Defendants have appealed to this Court against the decree of the District Judge, and the Plaintiffs Respondents have preferred a cross-appeal. During the pendency of the appeal in this Court, the Plaintiffs have instituted proceedings in the Court of the Settlement Officer of Chota Nagpur for settlement of fair rents under sec. 85 of the Chota Nagpur Tenancy Act 1908, and for enhancement of the rent of the under-tenure from Rs. 1-4 a year to Rs. 480 a year. The Defendants have applied to this Court for an order upon the Settlement Officer to stay the trial of the proceedings instituted before him pending the determination of the appeal and cross-appeal preferred to this Court. It is urged on behalf of the Petitioners that if the appeal succeeds, the proceedings for the settlement of fair rents will become nugatory, and that the same result will follow if the cross-appeal succeeds and the Plaintiffs become entitled to a decree for ejectment : in other words, fair rent may have to be assessed only in the contingency of the failure of both the appeal and the cross-appeal. It has been contended under these circumstances that it is obviously

desirable that the question of the settlement of fair rents should not be investigated during the pendency of the appeal and the cross-appeal in this Court. This position has not been seriously controverted by the Plaintiffs Opposite Party. But it has been argued on their behalf that this Court has no jurisdiction to issue any direction to the Settlement Officer, in respect of the proceedings under sec. 85.

2. It is plain that if this Court is competent to give any directions to the Settlement Officer in respect of the proceedings instituted before him, it can do so only in exercise of the power of superintendence vested in it by sec. 15 of the Indian High Courts Act 1861. This power of Superintendence can be exercised only over Courts which are subject to the Appellate Jurisdiction of the High Court. The question consequently arises, whether the Court of a Revenue Officer in which a proceeding for settlement of fair rents has been instituted under sec. 85 of the Chota Nagpur Tenancy Act is a Court subject to the Appellate Jurisdiction of this High Court. Sub-sec. 4 of sec 85 provides that when a settlement of rent is made, an appeal shall lie from such settlement in the prescribed manner and to the prescribed officer. Clause 8 of sub-sec. 2 of sec. 264 authorises the Local Government to make Rules with a view to prescribe the officer to whom and the manner in which appeals shall lie from orders or directions passed by Revenue Officers under sec. 85. On the 18th June 1909, the Local Government framed Rules to the effect that when rent has been settled by an Assistant Settlement Officer, the appeal shall lie to the Settlement Officer to whom the Assistant Settlement Officer is subordinate, and when rent has been settled by a Settlement Officer himself, the appeal shall lie to the Commissioner. It is plain consequently that where, as here, the proceeding for settlement of fair rent is instituted in the Court of a Settlement Officer, that Court is Subordinate to the Commissioner. Our attention has not been drawn to any Statutory provision or rule which makes the Commissioner or the Settlement Officer subordinate to the Appellate Jurisdiction of this Court. For the purpose of the application of the power of superintendence vested in this Court under sec. 15 of the Indian High Courts Act, it is not necessary that an appeal should lie to this Court in the very proceeding in which the power of superintendence is invoked : in fact, if the party aggrieved is entitled to relief by way of appeal, it is not necessary for him to invoke the exercise of the power of superintendence. To take one illustration, an appeal to this Court is barred under sec. 102 of the CPC of 1908, when the amount or value of the subject-matter of suits of the nature cognisable by a Court of Small Causes does not exceed five hundred rupees : in such a case if the suit has been tried by a Court subject to the Appellate Jurisdiction of this Court, the exercise of our power of superintendence may be invoked [Shamadani v. Bhoja Ram 22 W. R. 44 (1893), Rama Bai v. Trimbak 9 Bom. H. C. R. 283 (1872)] provided that the case is of such a nature as to require the interference of this Court in the exercise of its extraordinary powers. But where a Court is made subordinate to the Appellate Jurisdiction of a tribunal, different from and in no way subordinate to this Court, it cannot reasonably be held that the Court is subordinate to the Appellate Jurisdiction

of this High Court. Analogy is furnished by the decision in *Darbari Panjara v. Bhoti Roy* 18 C. W. N. 575 (1914) where it was pointed out that in the Sonthal Perganahs there are two entirely distinct series of Courts, Original and Appellate, and that the distinction is fundamental although the same individual may preside over two different Courts. The cases in which it has been ruled that the High Court has jurisdiction to interfere with the orders of Collectors and Deputy Collectors under Act X of 1859 are clearly distinguishable. *Horro Mohun v. Kedarnath* 5 W. R. Act X 25 (1866), *Bhyrub Chunder v. Shyama Soondari* 6 W. R. Act X 68 (1866), *Gobind Coomar v. Kisto Coomar* 7 W. R. 520 (1867), *Deanutoollah v. Nawab Nazim* 10 W. R. 341 (1868), *Gudadhur v. Nundlal* 12 W. R. 406 (1864), *Nassir Jan v. Akbur Majumdar* 15 W. R. 418 (1874) *Nilmoni Singh v. Taranath* I. L. R. 9 Cal. 295 (1882), *Ramanuj Das v. Lakhun Parida* 11 C. W. N. 112 (1906), *Chaitan Patgosi v. Kunja Behari* 15 C. W. N. 863 : S. C. I. L. R. 38 Cal. 832 (1911). The provisions, it may be pointed out, for appeals under Act X of 1859, are on entirely different lines from those prescribed by the Chota Nagpur Tenancy Act 1908. The cases of *Madho Prokash v. Murli Manohar* I. L. R. 5 All. 406 (1883) and *Ramlochan v. Beni Prasad* I. L. R. 36 Cal. 252 (1908) deal respectively with the question of procedure in Revenue Courts, and the procedure applicable to execution of decrees transferred from Revenue Courts to Civil Courts : the principle applicable to those matters does not in any way assist the contention of the Petitioners. Nor does the case of *Kartic Chandra v. Gora Chand* 17 C. L. J. 593 (1912) advance the argument of the Petitioners. That decision is an authority for the proposition that proceedings on applications for enhancement of rent under the provisions of secs. 27 to 30 of the Chota Nagpur Tenancy Act are judicial proceedings before the Deputy Commissioner who is for this purpose a Court subordinate to the Appellate Jurisdiction of this High Court. Reliance was placed in support of this view on the circumstance that under sec. 224 an appeal does, under certain circumstances, lie from the judgment of a Deputy Commissioner to the Judicial Commissioner and in certain other circumstances to the High Court. The case before us stands plainly on a wholly different footing. It would in our opinion be anomalous to hold that where, by statute, superintendence over a Revenue Officer is vested, in a particular matter, in the Commissioner and the Board of Revenue, the Revenue Officer should be deemed even for the purposes of that particular proceeding a Court subordinate to the Appellate Jurisdiction of this High Court. In our opinion, sec. 15 of the Indian High Courts Act 1861 has no application to proceedings for settlement of fair rents instituted before a Revenue Officer under sec. 85 of the Chota Nagpur Tenancy Act, 1908. In this view the Rule must be discharged with costs, one gold mohur. The other Rules, it is conceded, will be governed by this judgment, and will consequently be discharged, but there will be no order for costs in those Rules.