

(1868) 12 CAL CK 0002

Calcutta High Court

Case No: Special Appeal No. 866 of 1868

Sarat Chandra Roy Kanungo

APPELLANT

Vs

The Collector of Chittagong

RESPONDENT

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Date of Decision: Dec. 8, 1868

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### Judgement

L.S. Jackson, J.

The decision of the lower Appellate Court is clearly erroneous. Plaintiff sued to recover possession of some lands from which he had been dispossessed in execution of a decree made in favour of the defendant against a third person, u/s 15 of Act XIV of 1859. In the course of the proceedings, the plaintiff filed a list of witnesses which is tantamount to an application for summons, and by order of the Court an Ameen was deputed to hold a local enquiry, and report. It seems that the main point in dispute was, whether that which the plaintiff sues to recover was really land or water. Witnesses were not summoned, and, consequently, no oral evidence was taken by the Court; but the Ameen examined witnesses on the spot, and made a report which was taken into consideration by the Court. On that report, and on certain papers put in by plaintiff, the Sudder Ameen gave him a decree.

2. The Judge in his decision says, "The Sudder Ameen ordered a local enquiry before examining any witnesses in the Court, and it appears he examined none at all in Court at any time. This was not a proper course. Plaintiff raised no objection however, nor did his Counsel in appeal until this Court pointed out the omission." Now, undoubtedly, in disputed cases of title, it is advisable that the witnesses who are to prove the defendant's or the plaintiff's case should be examined in open Court. At the same time the report of an Ameen and the evidence recorded on a local enquiry by an Ameen, are evidence, and, if, as we can gather in this case, the parties choose to agree that the evidence shall be taken before the Ameen, and that the matters in dispute shall be referred to an Ameen for enquiry, there is no legal objection to such a course, and the Judge ought, therefore, in this case to have referred to the evidence taken by the Ameen and also to his report, and if he thought that the witnesses named by the plaintiff ought to have been examined in

Court, he should have sent the case back to the Sudder Ameen with directions accordingly. We, therefore, reverse the order passed by the Additional Judge on this appeal, and remand the case to his Court, in order that it may be retried as directed.