

(1863) 07 CAL CK 0001

Calcutta High Court

Case No: Miscellaneous Appeal No. 7 of 1862

Shibnath Moitro

APPELLANT

Vs

Phillip

RESPONDENT

Date of Decision: July 3, 1863

Judgement

Sir Barnes Peacock, Kt., C.J.

The question raised in this case is, whether an order passed by a Collector upon an application made u/s 25 of Act X of 1859 is appealable to the Judge or to the Revenue authorities. Section 151 of that Act enacts that "all orders passed by a Collector "under this Act, not being judgments in suits, and relating to the trial "thereof, or orders passed after decree, and relating to the execution "thereof, shall be appealable to the Commissioner." It is therefore necessary to determine whether an application u/s 25 is a suit or not. If not, then an order passed by the Collector upon an application made u/s 25 is not a judgment in a suit, or an order passed in the course of a suit, and relating to the trial thereof, or an order passed after decree and relating to the execution thereof. A Full Bench of this Court has held in Biswambhar Misser v. Ganpat Misser Ante, p. 5, that an application to the Collector u/s 28 is a suit. But in that section it is stated that the "application shall be "dealt with as a suit under the provisions of this Act," and that "every "such suit shall be instituted within the period of twelve years from the "time when the title of the person claiming the right to assess the "land or dispossess the grantee or of some person claiming under him, "first accrued," &c. Under these words the Court could not say that an application to the Collector u/s 28 was not a suit. Section 25 is differently worded. It enacts, that "if any zamindar or other person in receipt of the rent of land requires assistance to eject any cultivator or not having a right of occupancy, or to eject any farmer or other "tenant holding only for a limited period, after the determination of his "lease or tenancy, or any agent after the determination of his agency, "or to enforce any attachment or ejectment expressly authorized by" any Regulation or Act, he shall make application to the Collector, and "the Collector shall proceed thereupon to enquire into the case, and "shall pass

orders in the manner provided for suits under this Act."

2. Now, the application which has been made to the Collector is an application made to him to give assistance; and when that application is made, the Collector is to proceed thereupon to enquire into the case, and pass orders in the manner provided for suits under the Act. The Collector may, no doubt, summon the parties to appear before him, and proceed in manner provided for suits, in order to determine whether he ought or not to render the assistance applied for. If the applicant cannot make out a clear case for his assistance, the Collector will not interfere. The application is not a suit, and consequently the appeal from the Collector's decision lies to the Commissioner, and not to the Judge. We think that the Judge ought not to have tried the appeal, and therefore reverse his decision with costs and interest. This is in accordance with the decisions in *Gunnydanshama v. W. Smith S.D.A.*, 1862, 32, and *Dusrutty Patnaik v. Muthundo Santra. S.D.A.*, 1862, 285. Section 152 of Act X of 1859 enacts, that "every appeal against the "order of a Collector shall be presented to the Commissioner within thirty "days from the date of the order; "we therefore cannot now grant to the respondent leave to present an appeal to the Commissioner after the time prescribed by that section. But he has a remedy in a regular suit, either under the provisions of section 23, Act X of 1859, or in the Civil Court, as the case may be.