

(1867) 03 CAL CK 0001

Calcutta High Court

Case No: Rule No. 1090 of 1866

In Re: Collector of Rungpore

APPELLANT

Vs

RESPONDENT

Date of Decision: March 15, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

We think that in this case the Judge had jurisdiction. S. 26, Regulation V of 1812, is in the following words: "Inconvenience to the public, and injury to private rights, having been experienced in certain cases, from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted that, whenever sufficient cause shall be shown by the Revenue Authorities, or by any of the individuals holding an interest in such estates, for the interposition of the Courts of Judicature, it shall be competent to the Zillah and City Judges to appoint a person, duly qualified, and under proper security, to manage the estate; that is, to collect the rents and discharge the public revenue, and provide for the cultivation and future improvement of the estate." At that time the person put in to manage the estate was in the nature of an ordinary receiver; and it appears to us that, without any express authority being given to the Judge, he would have power to control the receiver, by directing him to pay over any surplus which might remain in his hands after paying the Government revenue and providing for the cultivation and improvement of the estate. This section could never have intended that the receiver should retain in his hands any surplus profits of the estate, without being subject to the orders or control of the Judge by whom he was appointed. We think, therefore, that under the Regulation to which we have referred, even without the interpretation which in practice has been put upon it, the Judge had jurisdiction over the receiver with regard to the disposal of the surplus profits.

2. By Regulation V of 1827 it was enacted that, whenever the Zillah or City Courts should deem it proper, under the provisions of the Regulations therein mentioned, to provide for the administration and management of landed property, the Court should issue a precept to the Collector of Land Revenue directing him to hold the

estate in attachment. It could not have been intended that the Collector should hold all the surplus profits of the estate without being subject to the orders of the Court.

3. In point of fact we find in this very case that, as far back as 1860, Mr. Tucker, who was then the Judge, made an order for the payment of the surplus proceeds, and that order appears to have been complied with until very recently, when the Board of Revenue passed a collection of rules, by s. 7 of which it was stated that "a Collector cannot, unless under the special orders of the Civil Court" (thereby recognizing the jurisdiction of the Civil Court to make such orders) "disburse to any one any part of the surplus proceeds from lands thus managed under his superintendence; and inasmuch as the disbursement of any portion of such surplus proceeds is opposed to one object of the law, and is illegal See *Jugo Moyee Chowdhraïn v. The Government*, 3 W.R., Mis., 17, the receipt of any order for the disbursement of such surplus from the Civil Courts, though it must be obeyed, should be immediately reported with full particulars for the information of the Commissioner and the Board of Revenue,". The Government Pleader, who has appeared before us to-day on behalf of the Collector, has argued that the object of the law to which the disbursement of any part of the surplus proceeds is alleged to be opposed, was to compel the parties disputing to come to terms, or, in other words, to drive them into a settlement of their disputes by withholding from them the profits of their estates. We think it very clear that the object of the law was not to force the disputants into an arrangement, but to avoid inconvenience to the public, or injury to the parties, which might arise from their neglecting, pending their disputes, to pay the Government revenue, or to manage their estates properly. The order of the Board of Revenue goes on to say that "surplus proceeds may, with the sanction of the Commissioner, be expended upon the improvement of the estate," and that any money not required for that purpose should "be held simply in deposit, and not invested so as to produce interest or profit," If the Judge has no power to make an order with regard to the surplus proceeds, the owners will not only be deprived of the present use of the surplus proceeds, but will also be deprived of all benefit which might accrue to them from having them profitably invested. In short, if the Judge has no jurisdiction, proprietors of the estates may, as long as their disputes continue, be left to starve, or be compelled to borrow money at a high rate of interest, whilst the surplus proceeds of their estate are lying without any advantage to them in the Collector's treasury.

4. We think that the Judge had power to make the order.

5. It is not necessary to determine whether the Judge was right in making an order that the Collector should pay the parties according to their respective shares. The propriety of making such an order might depend upon the facts of the particular case. In this case it appears that a petition was presented to the Judge by the Collector, representing that the order of the Judge's predecessors ordering the Collector to pay the profits of the estate to the zamindars, according to their

respective shares, had been regarded by the Board of Revenue as contravening the Board's rule, and praying that the said order might be set aside, and that the Judge, thereupon, requested the Collector to ascertain and report the number of shareholders, and the extent of the share of each, if there was any such specification. The Collector reported that the profits had been paid according to the share of each shareholder duly specified, whereupon the Judge ordered that payment should be made to each separate shareholder, meaning, as we understood, that payments should be made in the shares in which the shareholders had been in the habit of receiving them. But whether this was the meaning of the order or not, it appears to the Court that the Judge had jurisdiction to make an order with regard to the surplus proceeds. The High Court cannot therefore, under its general power of superintendence over the subordinate Courts, quash the order of the Judge. It is not necessary to send the case back to the Bench which referred it, but the application will be refused.