

(1869) 04 CAL CK 0012

Calcutta High Court

Case No: Special Appeal No. 2450 of 1868

Siali Dhar Das

APPELLANT

Vs

Ranglal Sahu and Another

RESPONDENT

Date of Decision: April 2, 1869

Judgement

Norman, J.

This is a suit brought u/s 9 of Act VI (B.C.) of 1862, by which the plaintiff made an application to the Collector, praying him to allow the measurement of certain lakhiraj land, and to enjoin the attendance of the special appellant, Ranglal Saba and others. It appears that the plaintiff purchased an estate, No. 856 in the Towji Register, situated in Mauza Jairampore, Pergunna Sripore, at a sale for arrears of rent. The defendants held 82 bigas of land rent-free, and have obtained a decree declaring their right to hold the lands as lakhiraj. The first Court made an order that the defendants "should be present and get the disputed land measured by the plaintiff." That decision was affirmed by the Judge. He says, "that the plaintiff has a right to measure the land appertaining to 866 of the towji and if the plaintiff measures, takes possession, and assesses any land which may have been decreed to the appellants by the Civil Court, the appellants have their remedy; but the plaintiff is not debarred from measuring whatever lands may still belong and pertain to No. 866 in the Collector's Towji."

2. We are of opinion that the decisions of the lower Courts are erroneous and must be reversed.

3. In order to determine whether the appellant has a right to measure the lands of the lakhirajdar, before proceeding to consider the language of that section, it is necessary to observe that no man has any natural right to go upon land, which is the exclusive property of another, or to measure it without his permission. If such a right exists in any case, it is one which must be created by some Legislative enactment. Can we find words creating such a right in section 9? We think not. Section 9 says, "every proprietor of an estate or tenure or other person in receipt of

the rents of an estate or tenure, has a right of making a general survey and measurement" of the lands comprised in such estate or tenure or any part thereof, unless restrained from doing so by express engagement with the occupants of the lands." Can it be said that according to the common understanding of men, if a person occupies lakhiraj or rent-free land adjacent to another's estate, but not shown to be dependent; on it, or in any way connected with it, that the lakhiraj lands are comprised in the estate? In the present case, the lands in Towji 866 are stated to be resumed lakhiraj mehal, in which the 82 bigas of land now in question were supposed to be included. The defendants have since, by a regular suit, established their title as lakhirajdars. The result is that they are holding an estate wholly distinct from, and unconnected with, the lands held by the plaintiff under the settlement of Towji No. 866. It appears to us that in no sense can the defendant's lands be said to be comprised within that settled estate. Reading section 9, in order to see what are the powers of the Collectors, an additional argument presents itself in support of the view we take. The Collector, if the case so requires, is to pass a decision enjoining or excusing the attendance of under tenants or ryots, not of all persons occupying land within the ambit of the estate. Under such circumstances, we reverse the decision of the lower Courts, with costs in all the Courts, and interest.